88-1600

No. ———

MAR 31 1989
JOSEPH F. SPANIOL, JR.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD CHRISTIANITY, *et al.*,
Petitioners,

v.

DAVID MOLKO, *et al.*,
Respondents.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

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APPENDIX A

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

S.F. 25038

Ct.App. A025338
Super.Ct. No. 769-529

Ct.App. A020935
Super.Ct. No. 769-529

DAVID MOLKO,
Plaintiff, Cross-Defendant and Appellant;

TRACY LEAL,
Plaintiff and Appellant,

v.

HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD CHRISTIANITY *et al.*,
Defendants, Cross-Complainants, and Appellants;

NEIL MAXWELL,
Cross-Defendant and Respondent.

[Filed Oct. 17, 1988]

This case raises three issues: (1) whether, consistently with the free exercise clause of the First Amendment of the United States Constitution and of article I, section 4, of the California Constitution, former members of a religious organization may sue that organization on various causes of action arising out of its allegedly deceptive recruitment practices; (2) whether the organization may cross-complain against a former member and others for allegedly violating its civil rights under federal and state statutes; and (3) whether California's equitable indemnity doctrine permits an intentional tortfeasor to obtain indemnity from concurrent intentional tortfeasors on a comparative fault basis.

Appellants David Molko and Tracy Leal are former members of the Unification Church.[1] While members of the Church, they were on separate occasions forcibly abducted from a public street by third parties and "deprogrammed"—i.e., persuaded to relinquish their belief in and association with the Church. Thereafter Molko and Leal filed the present action against the Church, alleging they had been fraudulently induced to joint the Church through a variety of deceptive tactics on the part of some of its members. Molko and Leal each asserted causes of action for fraud and deceit, intentional infliction of emotional distress, and false imprisonment. Molko also sought restitution of a $6,000 gift he alleged the Church obtained from him by undue influence.

The Church filed a first amended cross-complaint against Molko and Neil Maxwell,[2] alleging their depro-

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[1] We use the names "Unification Church" and "the Church" to refer collectively to the Holy Spirit Association for the Unification of World Christianity and New Education Development Systems, Inc. While the two organizations are apparently separate entities, we need not differentiate between them for purposes of this opinion.

[2] The cross-complaint also named Joseph Alexander, Sr., Stanley F. Leal, Virginia Mabry, and Judy Powell as cross-defendants. Those parties are not involved in the present appeal.

gramming activities violated the Church's federal and state civil rights.[3] (42 U.S.C. § 1985, subd. (3); Civ. Code, §§ 51.7, 52.) The Church also sued Maxwell for full or partial indemnity, on the theory that Maxwell, by kidnapping and deprogramming Molko, had wholly or partially caused any damages for which the Church might be found liable to Molko.

The court granted summary judgment for the Church in the action brought by Molko and Leal, and entered a judgment of dismissal for Molko after sustaining his demurrer without leave to amend as to the Church's amended cross-complaint against him. Similarly, the court entered a judgment of dismissal for Maxwell and the other cross-defendants after sustaining their demurrers without leave to amend as to the Church's amended cross-complaint against them.

Molko and Leal appealed from the summary judgment for the Church. The Church cross-appealed from the judgment of dismissal for Molko, and appealed from the judgment of dismissal for Maxwell and Alexander.[4] The Court of Appeal consolidated all the appeals; it affirmed the summary judgment for the Church, but reversed the judgments of dismissal for Molko, Maxwell, and Alexander. We granted petitions by Molko and Leal to review the affirmance of summary judgment for the Church, and by Maxwell to review the reversal of his judgment of dismissal.[5]

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[3] The Church alleged that Molko, after his own deprogramming, became involved in kidnapping and deprogramming other Church members.

[4] The Church did not appeal from the judgments of dismissal for cross-defendants Stanley F. Leal, Virginia Mabry, or Judy Powell.

[5] Neither Molko nor Alexander sought review of the reversals of their judgments of dismissal.

As will appear, we conclude that (1) the summary judgment for the Church should be affirmed as to the cause of action for false imprisonment but reversed as to the causes of action for fraud, intentional infliction of emotional distress, and restitution, and (2) the reversal of the judgment of dismissal for Maxwell should be affirmed.

I. FACTS

A. *Facts as to David Molko* [6]

In June 1978 27-year-old David Molko graduated from Temple University School of Law. A month later he took and passed the Pennsylvania bar examination. In spite of these educational successes, he was unsure about his future. He considered moving to California, and decided to visit San Francisco, perhaps to find a job or take the California bar examination. He arrived in San Francisco in early January 1979.

On Sunday, January 21, Mark Bush and Ernest Patton approached Molko as he waited at a bus stop in San Francisco. Bush and Patton told Molko they lived in an "international community" of socially conscious people from different occupations who met in the evenings to discuss important issues. They invited Molko to come to dinner that evening. Molko asked the two their occupations and was told they did social work and worked with environmental programs. He asked if Bush and Patton had a "religious connection." They said "no." Bush and Patton did not reveal to Molko that they were members of the Unification Church, or that their purpose in ap-

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[6] Molko, Leal, and the Church have stipulated that the deposition testimony of Tracy Leal, David Molko, Stanley F. Leal, Collette Zeilinski, and Ernest Gibbs Patton, Jr.—which was extensively quoted in the papers supporting and opposing the Church's motion for summary judgment—be included in the clerk's transcript on appeal. Accordingly, we take judicial notice of the deposition transcripts and consider them part of the record for purposes of this appeal. (Evid. Code, § 452, subd. (d).)

proaching him and inviting him to dinner was to recruit him into the Church.

Molko attended the dinner, at which there appeared to be a number of other invited guests. He was kept apart from the other guests, and during dinner was held in constant conversation with group members. After dinner there was a lecture on general social problems, followed by a slide show on "Boonville"—a "farm" a few hours to the north, owned by the group at the house. The slide show depicted Boonville as a rural getaway where people from the house went for relaxation and pleasure. When the presentation was concluded, all the dinner guests were invited to visit the farm. Bush, Patton, and another group member, David Hager, strongly urged Molko to accept the invitation, and told him a van would be leaving for Boonville in a few minutes. Molko said he had no personal belongings with him, and he preferred to think about it. The group members assured him they would provide for all his needs, and again urged him to go. Impressed by this hospitality and enthusiasm, Molko finally agreed to go. At their reqeust he then filled out and signed a form declaring his name, address, and telephone number,[7] and 15 minutes later was in a van on his way to Boonville. He did not know and was not told Boonville was an indoctrination facility for the Unification Church.

The van arrived at Boonville several hours later. Molko was given a sleeping bag and shown to a shelter where others were already sleeping. He quickly fell asleep, and awoke the next morning to discover that

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[7] The Church claims the form identified the program at Boonville as being associated with the Unification Church. Molko claims it did not. The Court of Appeals acknowledged this created a factual dispute, but deemed the dispute immaterial because of the conclusions the court reached in holding the Church was entitled to summary judgment. Because we reach different conclusions, we do not, as will be seen, find the dispute immaterial.

many more people than just the 12 from the van were sleeping in the large room. When he arose and walked to the bathroom, a group member arose and walked with him. Wherever he went, a group member accompanied him.

Molko expected to spend some relaxed time in the country, but soon learned the day's schedule was tightly planned and left him no time to himself. First came group calisthenics, then breakfast, then a lecture on moral and ethical issues, followed by small group discussions of the lecture. Next came lunch, more exercise, another lecture and discussion, then a break to take a shower. Finally came dinner, "testimonials" by individuals about their lives and their impressions of the day at Boonville, and group singing followed by yet another group discussion. At the end of the day Molko was exhausted and quickly fell asleep.

Tuesday was a repeat of Monday, except that Milko became acquainted with group member Bethie Rubenstein. He asked her the name of the group, and she told him it was the "Creative Community Project." He asked if the group was associated with any religious organization, and she told him "no." By the end of Tuesday, Molko was tired, uncomfortable and concerned about the direction his life was taking. He informed Patton and Bush he desired to return to San Francisco. They told him he was free to leave and that a bus would depart at three o'clock in the morning, but they strongly urged him to stay and hear the important information that would be discussed in the days to come. Molko agreed to stay on a little longer.

Wednesday and Thursday were exactly like Monday and Tuesday—even the two-day cycle of lectures was repeated verbatim. The lecturers spoke of brotherly love and social problems, and included references to God and some amount of prayer. On Wednesday, Rubenstein in-

formed Molko the group's teachings derived from many philosophical sources, including Aristotle, Jefferson, and Reverend Sun Myung Moon. She did not disclose that Reverend Moon was the group's spiritual leader.

On Friday night, Molko was told the group was about to leave Boonville for "Camp K"—another group-owned retreat used on weekends. Molko said he wanted to return to San Francisco, but again was urged to give the group a few more days. He agreed and made the trip to Camp K, still oblivious of his involvement with the Unification Church.

The exercise-lecture-discussion regimen continued throughout both the weekend at Camp K and the following week back at Boonville, during which Molko became increasingly disoriented and despairing of his future. On Friday—his twelfth day of continuous group activity—Molko once again asked if the group was involved with any larger organization. Finally, a member named Gloria revealed to him for the first time that the group was part of the Unification Church. He was confused and angry, but was informed the deception was necessary because people who had heard negative stories about the Church tended to be unreceptive if they knew the group's identity before hearing what it had to say. He agreed to stay and try to work out his confusion.

That might be returned to Camp K, where he remained for approximately five to seven weeks of "advanced training." The same regimen and structure continued during this period. Molko's parents, concerned about his welfare, flew from Florida in late February to talk to him. They stayed a week, but saw their son for only a few hours, and only in the presence of church members. The parents urged him to come home briefly, but he refused. Molko—who by this time had been taught that his parents were agents of Satan trying to tempt him away from the Church—was confused by the visit, but

remained with the Church. His parents returned to Florida.

On finishing his advanced training at Camp K, Molko was judged ready to go back to the city to sell flowers and "witness"[8] for the Church. Shortly thereafter, in early April, two Church leaders told Molko the Church desparately needed funds for taxes, and urged him to give money. He donated $6,000 to the Church. Sometime during this period he also became a formal Church member.

Church leaders advised Molko he could help the Church most by becoming a member of the bar, and promised that the Church would pay for his bar review course. He agreed, and studied for and took the California bar examination while living in the Church's San Francisco house. As he left the final session of the bar examination, however, Molko was abducted and taken to a motel by "deprogrammers" hired by his parents. After three days of deprogramming, Molko terminated his association with the Unification Church.

B. *Facts as to Tracy Leal*

In June 1979 19-year-old Tracy Leal completed her freshman year at San Diego State University. She had found the college large and impersonal; she considered transferring to Humboldt State University in northern California, but desired to visit the school before applying for admission. To that end she bought a bus ticket to Humboldt and set out on Sunday, June 7. The trip required changing busses in San Francisco.

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[8] "Witnessing" is the Unification Church's name for the process of recruiting new members on the street. Bush and Patton, for example, were witnessing when they persuaded Molko to come to dinner.

Open and candid witnessing is employed by other religious denominations.

While waiting for her bus in San Francisco, Leal was approached by Unification Church member Collette Zielinski, who was witnessing for the Church. Zielinski told Leal she was waiting for a friend arriving from Switzerland. Leal remarked that she loved to ski and had always wanted to go to Switzerland. Zielinski said her friend was also a skier and perhaps Leal would like to talk to her. Church member Bradford Parker then arrived, and Zielinski and Parker told Leal about the house in which they lived. They said they were part of the "Creative Community Project," described as a group of socially concerned professional people involved in good works such as giving food to the poor. They invited Leal to have lunch and go sightseeing with them, then join them for dinner at the house. They assured Leal she could catch another bus to Humboldt later that evening. Leal asked if Zielinski and Parker were part of a religious group, and said she did not want to get involved with them if they were. They replied only that the people in their group "all came from different religious backgrounds." Leal accepted their invitation.

That evening Leal went to the group's house for dinner. Like David Molko, she was kept apart from other dinner guests and was held in constant conversation with Church members. She heard the same lecture, saw the slide show on Boonville, and received the same invitation to go there. She accepted the invitation, signed the same kind of form,[9] and a few minutes later was on the bus to Boonville. Like Molko, she did not know Boonville was part of the Unification Church.

At Boonville Leal experienced the same exercise-lecture-discussion regimen Molko received five months earlier. On Tuesday, her second day at Boonville, she asked Joshua, a codirector of the camp, whether the

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[9] Leal states the form she signed did not identify the Unification Church. She took it to be some kind of "hold harmless" form for the trip to Boonville.

group was part of a religious organization, and specifically whether they were "Moonies." Joshua said they were not Moonies, but were a form of Christian group. He said, however, they were "keeping quiet about it for a while" because they did not want to frighten people away.

After two days at Boonville, Leal went for a two-week seminar at Camp K. During this period she experienced the same type of doubts and fears as had Molko. At the end of the two weeks, she again asked Zielinski and Parker if the organization was "part of the Moonies." They assured her it was not. Later that evening they added that, while they were not Moonies, they did follow some of the teachings of Reverend Moon. Five days later—twenty-two days after recruiting Leal at the bus depot—they informed Leal they were in fact part of the Unification Church.

Leal remained with the group after learning its identity. During the next two months her family visited her and tried to convince her to get away from the Church for a while. She told her parents she would not leave the house with them for fear of being abducted and deprogrammed. On September 1 Leal flew to Boulder, Colorado, for a month-long series of advanced lectures, at the conclusion of which she became a formal Church member. From Boulder she went to Los Angeles, where she sold flowers on the street to raise money for the Church. On October 29, Leal was abducted from a Los Angeles street by deprogrammers hired by her parents. The deprogrammers successfully persuaded Leal to abandon her association with the Unification Church.

II. FRAUD AND DECEIT

A. *Standard of Review*

A motion for summary judgment "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party

is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).) The purpose of summary judgment is to penetrate evasive language and adept pleading and to ascertain, by means of affidavits, the presence or absence of triable issues of fact. (Chern v. Bank of America (1976) 15 Cal.3d 866, 873.) Accordingly, the function of the trial court in ruling on a motion for summary judgment is merely to determine whether such issues of fact exist, and not to decide the merits of the issues themselves. (Walsh v. Walsh (1941) 18 Cal.2d 439, 441.)

Summary judgment is a drastic measure that deprives the losing party of a trial on the merits. (Mann v. Cracchiolo (1985) 38 Cal.3d 18, 35.) It should therefore be used with caution, so that it does not become a substitute for trial. (Rowland v. Christian (1968) 69 Cal.2d 108, 111.) The affidavits of the moving party should be strictly construed, and those of the opponent liberally construed. (Stationers Corp. v. Dun & Bradstreet (1965) 62 Cal.2d 412, 417.) Any doubts as to the propriety of granting the motion should be resolved in favor of the party opposing the motion. (Slobojan v. Western Travelers Life Ins. Co. (1969) 70 Cal.2d 432, 437.)

A defendant is entitled to summary judgment if the record establishes as a matter of law that none of the plaintiff's asserted causes of action can prevail. (Stationers Corp. v. Dun & Bradstreet, supra, 62 Cal.2d at p. 417.) To succeed, the defendant must conclusively negate a necessary element of the plaintiff's case, and demonstrate that under no hypothesis is there a material issue of fact that requires the process of a trial. (*Ibid.*) We shall examine the grant of summary judgment in this case with the foregoing standard in mind.[10]

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[10] The Church argues that under Reader's Digest Assn. v. Superior Court (1984) 37 Cal.3d 244, summary judgment should be deemed a "favored remedy" and viewed under a standard more favorable to the Church because the case involves the exercise

B. *Nature of the Fraud Claim*

The necessary elements of fraud are: (1) misrepresentation (false representation, concealment, or nondisclosure); (2) knowledge of falsity (scienter); (3) intent to defraud (i.e., to induce reliance); (4) justifiable reliance; and (5) resulting damage. (Seeger v. Odell (1941) 18 Cal.2d 409, 414.) Molko and Leal contend specified members of the Unification Church knowingly misrepresented the Church's identity with the intent to induce each of them to associate with and ultimately join the Church. Molko and Leal further contend they justifiably relied on those misrepresentations in unknowingly agreeing to participate in Church activities, and suffered psychological and financial damage as a result of their involvement with and membership in the Unification Church. They state they would not have chosen to associate with the Church had they known its true identity.

The Church concedes for pleading purposes its members knowingly misrepresented the Church's identity to Molko and Leal. It further concedes the misrepresentations were made with the intent to induce Molko and Leal first to associate with Church recruiters and later to continue participating in Church activities. Nor, finally, does the church contest plaintiffs' claims that they suffered damages as a result of their involvement with the Church. The Church contends, however, that it is entitled to summary judgment because the undisputed facts conclusively negate the element of justifiable reliance.

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of religious rights. While similar suggestions have been made elsewhere (see Comment, *Religious Torts: Applying the Consent Doctrine as Definitional Balancing* (1986) 19 U.C. Davis L. Rev. 949, 972-973), we decline the Church's invitation to elevate the standard here. As we stated in *Reader's Digest*, the higher standard for summary judgment in defamation cases is necessary because a verdict in such actions requires that actual malice be shown by clear and convincing evidence. (37 Cal.3d at p. 252.) No such necessity exists here.

Justifiable reliance exists when the misrepresentation or nondisclosure was an immediate cause of the plaintiff's conduct which alters his legal relations, and when without such misrepresentation or nondisclosure he would not, in all reasonable probability, have entered into the contract or other transaction. (Wennerholm v. Stanford Univ. Sch. of Med. (1942) 20 Cal.2d 713, 717; Spinks v. Clark (1905) 147 Cal. 439, 444.) The Church contends that because Molko and Leal learned the Church's true identity prior to becoming formal members, the misrepresentations were "cured" and Molko and Leal could not have justifiably relied on them in deciding to join the Church. (See, e.g., Neet v. Holmes (1944) 25 Cal.2d 447, 459 [plaintiff who went ahead with transaction after learning true facts "waived the fraud"].)

Molko and Leal admit they were aware of the Church's identity at the time they formally joined. However, they contend that by the time the Church disclosed its true identity, the Church's agents had rendered them incapable of deciding *not* to join the Church, by subjecting them, without their knowledge or consent, to an intense program of coercive persuasion or mind control.[11] They contend, in other words, that the Church deceived them into a setting in which they could be "brainwashed," and that the Church could not then "cure" the deception by telling them the truth after their involuntary indoctrination was accomplished.[12] Molko and Leal therefore con-

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[11] We use the terms "coercive persuasion," "mind control," and "brainwashing" interchangeably to refer to the intense indoctrination procedures discussed herein.

[12] The Court of Appeal mischaracterized the fraud claims when it stated that plaintiffs' contention was, "they justifiably relied on representations they *knew to be untrue* because those who made the false representations first stripped [Molko and Leal] of their independent judgment." (Italics added.) The contention is rather that Molko and Leal justifiably relied on representations they *believed* to be true, and as a result were subjected to a process by which they were stripped of their independent judgment.

tend that a triable issue of fact remains as to whether the Church brainwashed them prior to disclosing its identity. If the answer is affirmative, they urge, they have established justifiable reliance.

Although Molko and Leal are far from the first to advance a brainwashing theory in a case involving religious recruitment and indoctrination (see, e.g., Katz v. Superior Court (1977) 73 Cal.App.3d 952; Meroni v. Holy Spirit Assn. (1984) 480 N.Y.S.2d 706; Orlando v. Alamo (8th Cir. 1981) 646 F.2d 1288; Turner v. Unification Church (1st Cir. 1979) 602 F.2d 458; Lewis v. The Holy Spirit Assn. (D.Mass 1983) 589 F.Supp. 10; Schuppin v. Unification Church (D.Vt. 1977) 435 F.Supp. 603), they are the first to do so in this court. We therefore find it appropriate to briefly review the concept of brainwashing.

Brainwashing is "a forcible indoctrination to induce someone to give up basic political, social or religious beliefs and attitudes and to accept contrasting regimented ideas." (Webster's Ninth New Collegiate Dict. (1987) p. 175.) The specific methods of indoctrination vary, but the basic theory is that brainwashing "is fostered through the creation of a controlled environment that heightens the susceptibility of a subject to suggestion and manipulation through sensory deprivation, physiological depletion, cognitive dissonance, peer pressure and a clear assertion of authority and dominion. The aftermath of indoctrination is a severe impairment of autonomy and [of] the ability to think independently, which induces a subject's unyielding compliance and the rupture of past connections, affiliations, and associations." (Peterson v. Sorlein (Minn. 1981) 299 N.W.2d 123, 126.)

The brainwashing concept is controversial. Some highly respected authorities conclude brainwashing exists and is remarkably effective. (See, e.g., Lifton, Thought Reform and the Psychology of Totalism (1961); Schein,

Coercive Persuasion (1961).) Some commentators additionally conclude that certain religious groups use brainwashing techniques to recruit and control members. (See, e.g., Delgado, *Religious Totalism: Gentle and Ungentle Persuasion Under the First Amendment* (1977) 51 So.Cal.L.Rev. 1, 3-9; Rudin & Rudin, Prison or Paradise? The New Religious Cults (1980) pp. 20-25; Clark et al., Destructive Cult Conversion: Theory, Research and Treatment (1979) 1-15.) Courts have recognized the existence of brainwashing in religious settings. (See Peterson v. Sorlein, supra, 299 N.W.2d at p. 126; Meroni v. Holy Spirit Assn. (1984) 125 Misc.2d 1061, 1067.)

To the contrary, other authorities believe brainwashing either does not exist at all (see Colemen, *New Religions and the Myth of Mind Control* (1984) Am. J. Orthopsychiatry 322, 323) or is effective only when combined with physical abuse or physical restraint (see Scheflein & Opton, The Mind Manipulators (1978) p. 23). We need not resolve the controversy; we need only conclude that the existence of such differing views compels the conclusion that Molko and Leal's theory indeed raises a factual question—viz., whether Molko and Leal were brainwashed—which, if not prohibited by other considerations, precludes a grant of summary judgment for the Church.

C. *The Singer/Benson Declarations*

In support of their theory, Molko and Leal sought to introduce the declarations of psychologist Dr. Margaret Singer and psychiatrist Dr. Samuel Benson. Both are experts on coercive persuasion and its use by religious groups. Drs. Singer and Benson examined Molko and Leal, and stated in their declarations that they believed the Unification Church's sophisticated indoctrination techniques had rendered Molko and Leal incapable of exercising their own will and judgment, or of responding independently upon learning of their deceptive recruitment.

The trial court and Court of Appeal ruled the Singer and Benson declarations inadmissible on the grounds that (1) the doctors' testimony conflicted with that of Molko and Leal and (2) introducing the declarations would raise inquiries forbidden by the free exercise clause of the First Amendment. We disagree with both conclusions.

The courts below found a conflict between (1) plaintiffs' statements that they joined the Church because it satisfied "personal concerns and anxieties" and (2) Singer's and Benson's statements that it was plaintiffs' unawareness of the Church's identity that caused them to stay. We perceive no such conflict. First, the very theory of coercive persuasion is that it operates, in part, by first amplifying the subject's personal concerns and anxieties and then providing a means of satisfying them. (Schein, Coercive Persuasion, supra, at pp. 117-258.) Second, the mere fact that the Church addressed plaintiffs' personal concerns and anxieties does not conclusively or necessarily establish that Molko and Leal would have chosen to associate with the Church had they known its identity. Thus, viewed in the light most favorable to Molko and Leal, both sets of statements are consistent with the contention that they were deceived into a stiuation in which they were then brainwashed. Accordingly, the Singer/Benson declarations are not, as the Church argues, made inadmissible by the rule in D'Amico v. Board of Medical Examiners (1974) 11 Cal.3d 1, 21.

The courts below also held that the Singer and Benson declarations raised questions not allowable under the free exercise clause of the First Amendment to the United States Constitution. We disagree, for reasons we will discuss momentarily.

First, however, we must place the constitutional discussion in the correct perspective. The Court of Appeal declared that Molko and Leal's theory "rest[ed] entirely" on the Singer and Benson declarations. Accordingly, it

framed its discussion in terms of whether the declarations' admission would run afoul of the First Amendment. While we reach the same issues under both the federal and state Constitutions, we do so in terms not of the declarations, but of the brainwashing theory itself. Although the Singer and Benson declarations provide a scientific basis for and lend support to plaintiffs' brainwashing theory, we find that the basic theory is amply stated in plaintiffs' own declarations.[13] Therefore, even if arguendo the declarations were correctly excluded,[14] their exclusion does not affect the brainwashing theory for purposes of summary judgment. Molko and Leal have stated an issue of fact; if the issue survives constitutional analysis, it must defeat summary judgment on their actions for fraud.

D. *Constitutional Issues*

1. *Applicable Principles*

The First Amendment to the Constitution of the United States provides that "Congress shall make no law respecting an establishment of religion, or prohibiting

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[13] Molko, for example, stated: "I felt my spirit of free will had been broken by [the] total absence of contact with the outside world, the rigid indoctrination program which I was going through daily, and the inability to make any decision on my own." He also stated the Church subjected him to "psychological and emotional manipulation." Leal stated: "While I had no intention of ever becoming a Moonie, in retrospect, I feel that I lost my ability to freely choose whether or not I wished to stay with the group." She also described herself as "pretty thoroughly indoctrinated" by her fourth day at Boonville, and as "robot-like." These statements, from documents incorporated into the pleadings, must be liberally construed for purposes of contesting a motion for summary judgment. (Gray v. Reeves (1977) 76 Cal.App.3d 567, 573.) So construed, they amply support Molko and Leal's coercive persuasion theory.

[14] In contending the declarations were properly excluded, the Church offers several arguments it did not raise in the Court of Appeal, and which we therefore do not reach. (Cal. Rules of Court, rule 29(b).)

the free exercise thereof. . . ." The provision creates two very different protections. The "establishment clause" guarantees the protections. The "establishment clause" guarantees the government will not impose religion on us; the "free exercise" clause guarantees the government will not prevent us from freely pursuing any religion we choose.

Because the First Amendment refers only to Congress, it originally did not apply to state and local governments. (See, e.g., Permoli v. New Orleans (1845) 44 U.S. (3 How.) 588, 610 [upholding conviction of Catholic priest for violating ordinance against exposing corpses to public view when he blessed the deceased at a funeral mass].) After the Civil War the states ratified the Fourteenth Amendment, and pursuant thereto the Supreme Court made the free exercise and establishment clauses federally enforceable against the states. (Everson v. Board of Education (1947) 330 U.S. 1, 8; Cantwell v. Connecticut (1940) 310 U.S. 296, 303-304.)

California guarantees free exercise and disestablishment in the state Constitution. (Cal. Const., art. I, § 4.)

The religion clauses protect only claims rooted in religious belief. (Wisconsin v. Yoder (1972) 406 U.S. 205, 215.) The free exercise clause protects religious beliefs absolutely. (Cantwell v. Connecticut, supra, 310 U.S. at pp. 303-304.) While a court can inquire into the *sincerity* of a person's beliefs, it may not judge the truth or falsity of those beliefs. (United States v. Ballard (1944) 322 U.S. 78, 86-88.) The government may neither compel affirmation of a religious belief (Torasco v. Watkins (1961) 367 U.S. 488, 495), nor penalize or discriminate against individuals or groups because of their religious beliefs (Fowler v. Rhode Island (1952) 345 U.S. 67, 70), nor use the taxing power to inhibit the dissemination of particular religious views (Murdock v. Pennsylvania (1943) 319 U.S. 105, 116).

However, while religious *belief* is absolutely protected, religiously motivated *conduct* is not. (Sherbert v. Verner (1963) 374 U.S. 398, 402-403; People v. Woody (1964) 61 Cal.2d 716, 718.) Such conduct "remains subject to regulation for the protection of society." (Cantwell v. Connecticut, supra, 310 U.S. at p. 304.) Government action burdening religious conduct is subject to a balancing test, in which the importance of the state's interest is weighed against the severity of the burden imposed on religion. (Wisconsin v. Yoder, supra, 406 U.S. at p. 214.) The greater the burden imposed on religion, the more compelling must be the government interest at stake. (Compare Wisconsin v. Yoder, supra, 406 U.S. at pp. 221-235 [government's strong interest in educating citizens insufficient to justify educational requirement that threatened continued survival of Old Order Amish communities], with Goldman v. Weinberger (1986) 475 U.S. 503, 508 [government's reasonable interest in uniform military attire sufficient to justify mild burden on religious expression created by ban against Jewish officer wearing a yarmulke].) A government action that passes the balancing test must also meet the further requirements that (1) no action imposing a lesser burden on religion would satisfy the government's interest and (2) the action does not discriminate between religions, or between religion and nonreligion. (Braunfield v. Brown (1961) 366 U.S. 599, 607.)

Applying these criteria, the Supreme Court has allowed some religious conduct to be banned entirely (see, e.g., Reynolds v. United States (1878) 98 U.S. 145, 166 [upholding law against polygamy]; Prince v. Massachusetts (1944) 321 U.S. 158, 170-171 [permitting state to prohibit parents from allowing their children to distribute religious literature when necessary to protect children's and safety]), and some conduct to be compelled in the face of religious objections (see, e.g., Jacobson v. Massachusetts (1905) 197 U.S. 11, 38 [upholding compulsory vac-

cinations for communicable diseases]; United States v. Lee (1982) 455 U.S. 252, 261 [upholding mandatory participation of Amish in Social Security system]).

Other religious conduct, though not banned, has been restricted. (See, e.g., Heffron v. International Society for Krishna Consciousness (1981) 452 U.S. 641, 654 [upholding law restricting sale and distribution of literature and soliciting of funds at state fair to booths at specified locations]; Cox v. New Hampshire (1941) 312 U.S. 569, 575 [upholding license requirement for religious parades].) Still other religious conduct, though not banned or restricted, has been made more costly. (See, e.g., Braunfield v. Brown, supra, 366 U.S. 599, 605 [upholding Sunday closing law in spite of financial burden on Orthodox Jew who must refrain from working Saturday as well]; Bob Jones University v. United States (1983) 461 U.S. 574, 604 [upholding denial of tax-exempt status to private school practicing religiously motivated racial discrimination]; Tony and Susan Alamo Foundation v. Secty. of Labor (1985) 471 U.S. 290, 305 [upholding minimum wage laws applicable to religious groups].)

While judicial sanctioning of tort recovery constitutes state action sufficient to invoke the same constitutional protections applicable to statutes and other legislative actions (New York Times v. Sullivan (1964) 376 U.S. 254, 265), religious groups are not immune from all tort liability. It is well settled, for example, that religious groups may be held liable in tort for secular acts. (See, e.g., Malloy v. Fong (1951) 37 Cal.2d 356, 372 [religious corporation liable for negligent driving by employee].) Most relevant here, in appropriate cases courts will recognize tort liability even for acts that are religiously motivated. (See, e.g., O'Moore v. Driscoll (1933) 135 Cal.App. 770, 778 [allowing priest's action against his superiors for false imprisonment as part of their effort to obtain his confession of sins]; Bear v. Reformed Mennonite Church (Pa. 1975) 341 A.2d 105, 107 [allow-

ing action for interference with marriage and business interests when church ordered congregation to "shun" former member]; Carrieri v. Bush (Wash. 1966) 419 P.2d 132, 137 [allowing action for alienation of affections when pastor counselled woman to leave husband who was "full of the devil"]; Candy H. v. Redemption Ranch, Inc. (M.D. Ala. 1983) 563 F.Supp. 505, 516 [allowing action for false imprisonment against religious group]; Van Schiack v. Church of Scientology of California, Inc.)D. Mass. 1982) 535 F.Supp. 1125, 1135 ["causes of action based upon some proscribed conduct may, thus, withstand a motion to dismiss even if the alleged wrongdoer acts upon a religious belief or is organized for a religious purpose"].)

2. *Constitutional Analysis of the Fraud Claim*

While the Unification Church's standing as a church is not at issue,[15] Molko and Leal contend the Church's misrepresentations were "entirely secular" and therefore not protected by the religion clauses. We disagree. Molko and Leal themselves claim the Church made its misrepresentations because of a belief in what they describe as "Heavenly Deception." According to Molko and Leal, that doctrine holds, in essence, that it is acceptable to lie to someone in order to give him the opportunity to hear Reverend Moon's teachings.[16] As alleged by the plaintiffs, the Church's deceptions, although secular on the surface, are clearly "rooted in religious belief." (Wisconsin v. Yoder, supra, 406 U.S. at p. 215.) While this does not mean such Church misrepresentations are immune from

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[15] Although he did not contest the Church's religious standing in the Court of Appeal, Molko now seeks to argue, in substance, that the Unification Church is not a bona fide religion because it is "dishonest." He may not raise this doubtful contention for the first time here. (Cal. Rules of Court, rule 29(b).)

[16] At oral argument, the Church disavowed any such belief.

government regulation, it does mean any such regulation must survive constitutional scrutiny.

Preliminarily, we note Molko and Leal do not contest the *sincerity* of what they understand to be the Church's beliefs; indeed, as just stated, they assert the Church's deceptions were the product of sincerely held beliefs. Our initial inquiry, then, is whether plaintiffs' actions for fraud implicate religious *belief* or religiously motivated *conduct*. If the former, the actions are barred. (Sherbert v. Verner, supra, 374 U.S. at pp. 402-403.) If the latter, further constitutional analysis is necessary.

Molko and Leal claim they do not challenge the truth or falsity of the Church's beliefs; they contend rather that they challenge only the Church's fraudulent conduct in implementing those beliefs. The Court of Appeal disagreed, reasoning that it would be impossible to consider Molko and Leal's theory "without questioning the authenticity and force of the Unification Church's religious teachings and permitting a jury to do likewise, which is constitutionally forbidden." The court relied on Katz v. Superior Court, supra, 73 Cal.App.3d 952, in reaching its conclusion, and the Church adopts this view. We therefore examine *Katz* to determine whether such reliance was properly placed.

Like the present case, *Katz* involved allegations of brainwashing against the Unification Church. The plaintiffs in *Katz*, however, were not former Church members but parents of current Church members. Claiming their adult children had been brainwashed, the parents sought and received orders from the superior court appointing them temporary conservators of the persons of their children. The parents' objective was to have their children deprogrammed and their children's association with the Unification Church terminated.

The Court of Appeal in *Katz* overturned the conservatorship orders, holding that in the absence of actions

rendering the adult believers "gravely disabled," the processes of the state could not "be used to deprive the believer of his freedom of action and to subject him to involuntary treatment." (73 Cal.App.3d at pp. 988-989.) The court declared the conservatorship orders violated the Church members' free exercise rights because the orders were based on a judgment regarding the truth or falsity of their beliefs. (*Id.* at p. 987.) Likening the Church members' radical changes of lifestyle to the refusal of the Amish in *Yoder* to send their children to high school, the court found the situation one in which conduct could not be separated from beliefs. (*Ibid.*) It queried "When the court is asked to determine whether that change i[n lifestyle] was induced by faith or by coercive persuasion is it not in turn investigating and questioning the validity of that faith?" (*Ibid.*)

The *Katz* court, of course, faced circumstances substantially different from those before us. The conservatorship orders, if allowed to stand, would have directly and severely burdened the Church members' absolute right to believe in the teachings of the Unification Church. Not only would the orders have allowed the parents to remove their adult children from the religious community they claimed to desire; the orders would have further allowed the parents to subject those individuals, against their will, to a program specifically intended to eradicate their current religious beliefs. Thus, the *Katz* court was correct—as in *Yoder*, the burden on the Church members' conduct was inseparable from the burden on their beliefs.

In sharp contrast, liability for fraud in the case at bar would burden on one's right to believe and no one's right to remain part of his religious community, nor would it subject anyone to involuntary deprogramming: the plaintiffs here are the former Church members themselves. It might, of course, somewhat burden the Church's efforts to recruit new members by deceptive means.

The *Katz* court also faced a legal question markedly different from that now posed: it considered whether a court could determine if an asserted religious conversion "was induced by faith or by coercive persuasion." (Katz v. Superior Court, supra, 73 Cal.App.3d at p. 987.) In other words, the *Katz* court had to decide whether a court could "question the validity" of a person's stated faith because someone *else* claimed that person was brainwashed. (*Ibid.*)

Again in contrast, the legal question here does *not* require a court to determine whether anyone's faith, current *or* past, is or was real. As stated above, Molko and Leal do not question the Church's beliefs. Neither do they challenge the "validity" of their former faith; they state quite plainly that their erstwhile beliefs in the Unification Church were sincere. The legal question is simply whether a religious organization can be held liable on a traditional cause of action in fraud for deceiving nonmembers into subjecting themselves, without their knowledge or consent, to coercive persuasion.

The Court of Appeal held that although *Katz* was different in certain ways, its analysis compelled the conclusion that to consider plaintiff's fraud claims would require "questioning the authenticity and the force" of the Church's teachings. We disagree. The challenge here, as we have stated, is not to the Church's teachings or to the validity of a religious conversion. The challenge is to the Church's practice of misrepresenting or concealing its identity in order to bring unsuspecting outsiders into its highly structured environment. That practice is not itself *belief*—it is *conduct* "subject to regulation for the protection of society." (Cantwell v. Connecticut, supra, 310 U.S. at p. 304.)

Our next inquiry, then, is whether the state's interest in allowing tort liability for the Chuch's deceptive practices is important enough to outweigh any burden such

liability would impose on the Church's religious conduct. (Wisconsin v. Yoder, supra, 406 U.S. at p. 221.)

We turn first to the question whether tort liability for fraudulent recruiting practices imposes any burden on the free exercise of the Unification Church's religion. We think it does. While such liability does not impair the Church's right to believe in recruiting through deception, its very purpose is to discourage the Church from putting such belief into practice by subjecting the Church to possible monetary loss for doing so. Further, liability presumably impairs the Church's ability to convert nonbelievers, because some potential members who would have been recruited by deception will choose not to associate with the Church when they are told its true identity.

Yet these burdens, while real, are not substantial. Being subject to liability for fraud does not in any way or degree prevent or inhibit Church members from operating their religious communities, worshipping as they see fit, freely associating with one another, selling or distributing literature, proselytizing on the street, soliciting funds, or generally spreading Reverend Moon's message among the population. It certainly does not, like the educational requirement in *Yoder*, compel Church members to perform acts "at odds with fundamental tenets of their religious beliefs." (Wisconsin v. Yoder, supra, 406 U.S. at p. 218.) At most, it potentially closes one questionable avenue for bringing new members into the Church.

We must next consider whether a compelling state interest justifies the marginal burden such liability imposes on the Church's free exercise rights. We have no difficulty in finding such an interest in the "substantial threat to public safety, peace or order" the Church's allegedly fraudulent conduct poses. (Sherbert v. Verner,

supra, 374 U.S. at p. 403.) For it is one thing when a person knowingly and voluntarily submits to a process involving coercive influence, as a novice does on entering a monastery or a seminary. (See Schein, Coercive Persuasion (1961) p. 272.) But it is quite another when a person is subjected to coercive persuasion without his knowledge or consent. While some individuals who experience coercive persuasion emerge unscathed, many others develop serious and sometimes irreversible physical and psychiatric disorders, up to and including schizopherenia, self-mutilation, and suicide. (See generally Delgado, *Religious Totalism: Gentle and Ungentle Persuasion Under the First Amendment*, supra, 51 So.Cal. L.Rev. 1, 10-25, and sources cited therein.) The state clearly has a compelling interest in preventing its citizens from being deceived into submitting unknowingly to such a potentially dangerous process.

The state has an equally compelling interest in protecting the family institution. (See, e.g., Reynolds v. United States, supra, 98 U.S. 145, 165-166; Meyer v. Nebraska (1923) 262 U.S. 390, 399-403; Pierce v. Society of Sisters (1925) 268 U.S. 510, 534-535; Moore v. City of East Cleveland (1977) 431 U.S. 494, 503-504 [plur. opn.].) Since the family almost invariably suffers great stress and sometimes incurs significant financial loss when one of its members is unknowingly subjected to coercive persuasion (Enroth, Youth, Brainwashing), and the Extremist Cults (1977) pp. 199-201), the state has a compelling interest in protecting families from suffering such impairments as a result of fraud and deception.

We conclude, therefore, that although liability for deceptive recruitment practices imposes a marginal burden on the Church's free exercise of religion, the burden is justified by the compelling state interest in protecting individuals and families from the substantial threat to

public safety, peace and order posed by the fraudulent induction of unconsenting individuals into an atmosphere of coercive persuasion.

Our analysis cannot end here, however. A government action burdening free exercise, even though justified by a compelling state interest, is impermissible if any action imposing a lesser burden on religion would satisfy that interest. (Thomas v. Review Bd., Ind. Empl. Sec. Div. (1981) 450 U.S. 707, 718; Sherbert v. Verner, supra, 374 U.S. at p. 406; Braunfield v. Brown, supra, 366 U.S. at p. 607.) After careful consideration, we perceive no such less restrictive alternative available. It has been suggested, for example, that brainwashing be criminalized. (Lucksted & Martell, *Cults: A Conflict Between Religious Liberty and Involuntary Servitude?* (June 1982) F.B.I. Law Enfrocement Bull. at p. 21.) This approach, which would invoke the coercive power of the state and could result in the jailing of church members, would clearly impose a greater burden on religion than would civil tort liability for fraud. It has also been suggested that the law should authorize involuntary deprogramming of brainwashed individuals by their friends or families. (Aronin, *Cults, Deprogramming, and Guardianship: A Model Legislative Proposal* (1982) 17 Colum. J. L. & Soc. Probs. 163, 183-216.) But the potentially severe burdens on religion inherent in this approach are evident from our discussion of *Katz, supra.* Lastly, it has been proposed that proselytizers be required to obtain informed consent prior to attempting to initiate religious conversions. (Delgado, *Cults and Conversion: The Case For Informed Consent* (1982) 16 Ga.L.Rev. 533, 537-540.) To the extent such an approach would require the active dissemination of specific information about a religion's nature, activities and lifestyle, however, it would also burden religion to a greater extent than would simple passive liability for fraud. In short, it appears that to allow injured parties to bring

private actions for fraud is the least restrictive means available for advancing the state's interest in protecting individuals and families from the harmful effects of fraudulent recruitment.

Finally, even though the state action is justified by a compelling state interest and imposes the minimum burden required to satisfy that interest, it can be upheld only if it (1) has the purpose and effect of advancing the state's secular goals and (2) does not discriminate between religions, or between religion and nonreligion. (Braunfield v. Brown, supra, 366 U.S. at p. 607.) We find that judicial sanctioning of traditional tort liability for fraudulent recruitment saitsfies these standards. First, its purpose and effect is plainly to advance the legitimate secular goal of protecting persons from being harmed by fraud. Second, it is nondiscriminatory: all organizations, religious or otherwise, may be held liable for damages caused by their fraudulent acts. Were a nonreligious organization—e.g., a group espousing a political or social cause—to deceive a person into unknowingly submitting to coercive persuasion, the same liability would ensue.

We conclude that neither the federal nor state Constitution bars Molko and Leal from bringing traditional fraud actions against the Church for allegedly inducing them, by misrepresentation and concealment of its identity, into unknowingly entering an atmosphere in which they were then subjected to coercive persuasion. Because triable issues of fact exist as to (1) whether the forms Molko and Leal signed before going to Boonville put them on notice regarding the Church's identity and (2) whether Molko and Leal were, by means of coercive persuasion, rendered unable to respond independently upon learning they had been deceived, we hold that the Court of Appeal erred in affirming the summary judgment for the Church as to plaintiffs' actions for fraud.

III. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

A. *Nature of the Claim*

The elements of a cause of action for intentional infliction of emotional distress are (1) outrageous conduct by the defendant, (2) intention to cause or reckless disregard of the probability of causing emotional distress, (3) severe emotional suffering, and (4) actual and proximate causation of the emotional distress. (Cole v. Fair Oaks Fire Protection Dist. (1987) 43 Cal.3d 148, 155, fn. 7.) Molko and Leal contend the Church's fraudulent and coercive conduct was outrageous, was carried out with reckless disregard of the probability of causing them emotional distress, and was the actual and proximate cause of their severe emotional suffering.

The Court of Appeal found in part that threats of divine retribution, of which Molko and Leal complained, were protected religious speech and could not form the basis of a claim of intentional infliction of emotional distress. We agree with this view. To the extent the claims are based merely on threats of divine retribution if Molko and Leal left the church, they cannot stand. (See Fowler v. Rhode Island, supra, 345 U.S. at p. 70 [court cannot regulate or control sermons]; Van Schaick v. Church of Scientology of Cal., Inc., supra, 535 F.Supp. at p. 1139.)

However, the claims do not rest solely or even primarily on threats of divine retribution. Molko and Leal essentially contend the same conduct that supports their fraud actions—i.e., misrepresentation and concealment of the Church's identity for the purpose of inducing them to submit unknowingly to coercive persuasion—also gives rise to an action for intentional infliction of emotional distress. The Court of Appeal, having found the fraud theory constitutionally impermissible, naturally found the same theory could not constitutionally provide the basis

for a different cause of action. Proceeding on the assumption that Molko and Leal had freely joined the Church, the court went on to find the Church's conduct could not be considered "extreme and outrageous" in the sense required to support an action for emotional distress.

Since we have determined that Molko and Leal's fraud theory *is* constitutionally permissible, we must consider whether the Church's conduct under that theory also gives rise to an action for intentional infliction of emotional distress. First, however, we consider two contentions raised by the Church.

B. *The Church's Preliminary Arguments*

The Church initially contends that all the misrepresentations of which Molko and Leal complain are privileged under Civil Code section 47 as "communication[s] without malice, to a person interested therein, . . . by one who is also interested. . . ." The point is without merit. Molko and Leal concede that the misrepresentations were communications, and that the Church's intent to recruit Molko and Leal did not reflect a "state of mind arising from hatred or ill-will," as required for a showing of malice. (Agarwal v. Johnson (1979) 25 Cal.3d 932, 944.) However, they correctly urge that the communications cannot be said to have been from one "interested" party to another. The Church relies on Brewer v. Baptist Church (1948) 32 Cal.2d 791, to establish that Molko and Leal were interested parties. But *Brewer* holds that "the common interest of the *members* of a church in church matters is sufficient to give rise to a qualified privilege to communication *between members* on subjects relating to the church's interests." (*Id.* at p. 796, italics added.) Here the Church has vigorously taken the position that Molko and Leal did not become Church members until after *learning* of the deceptions. It cannot now inconsistently claim a

privilege on the theory that Molko and Leal were members at the time the deceptions occurred.

The Church also contends that a statement by Leal in her deposition that certain of her harms were "self-inflicted" constitutes an admission of consent and therefore provides a complete defense to liability under Code of Civil Procedure section 3515. This argument is also without merit. Leal's statement relates to her final few weeks with the Church, during which she sold flowers on the streets of Los Angeles from 7 a.m. until midnight for 19 of 20 consecutive days. Leal said the physical harms she experienced were self-inflicted because she was obeying the Church's doctrine of suffering to "pay indemnity" to God. Viewed in the light most favorable to Leal, as it must be on motion for summary judgment, her statement reflects not consent but mere submission. In any event, since the statement relates to a period of time considerably later than that during which the alleged fraud and brainwashing occurred, it cannot provide a defense to the present action.

C. *Analysis of the Claim*

We begin by observing that the Church does not attempt to negate (1) its intention to cause, or its reckless disregard of the probability of causing, emotional distress, (2) plaintiffs' severe emotional suffering, or (3) its conduct's actual and proximate causation of that suffering. Because the Church must conclusively negate at least one necessary element of this cause of action to be entitled to summary judgment (Stationers Corp. v. Dun & Bradstreet, supra, 62 Cal.2d at p. 417.), the propriety of the summary judgment depends on whether the Church can establish as a matter of law that its conduct, even under Molko and Leal's theory, was not "extreme and outrageous" in the sense required to support an action for emotional distress.

Conduct is extreme and outrageous when it "exceeds all bounds of decency usually tolerated by a decent society, [and is] of a nature which is calculated to cause, and does cause, mental distress." (Cole v. Fair Oaks Fire Protection Dist., supra, 43 Cal.3d at p. 155, fn. 7.) Liability "does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities." (Rest.2d Torts, § 46, com. d.) "Behavior may be considered outrageous if a defendant (1) abuses a relation or position which gives him power to damage the plaintiff's interest; (2) knows the plaintiff is susceptible to injuries through mental distress; or (3) acts intentionally or unreasonably with the recognition that the acts are likely to result in illness through mental distress." (Cole v. Fair Oaks Fire Protection Dist., supra, 43 Cal.3d at p. 155, fn. 7.)

The Church offers two arguments why its conduct was not, as a matter of law, extreme and outrageous. First it contends its actions amounted to nothing more than "intensive religious practice," and therefore were different only in degree, not in kind, from those of many other religious groups. We find this claim unconvincing. Although fasting, poverty, silence or cloistered living may constitute intensive religious practice, we have already determined that fraud, even though purported to be religiously motivated, is actionable conduct under the circumstances presented here.

Second, as mentioned above, the Church argues that Leal's long hours of work were "self-inflicted." It contends its encouragement for her to sell flowers and solicit money does not constitute outrageous conduct. But since the conduct that the Church relies on occurred after Leal had formally joined the Church, the argument has no bearing on whether its original fraudulent inducement into an atmosphere of coercive persuasion—the conduct at issue—is extreme and outrageous.

Viewed in the light most favorable to plaintiffs, the Church's continued deceptions might well be seen as conduct breaching plaintiff's trust in the integrity of those who were promising to make their lives more meaningful. So viewed, the Church's actions might well constitute an abuse of "a relation or position which gives [the Church] power to damage the plaintiff's interest." (Cole v. Fair Oaks Fire Protection Dist., supra, 43 Cal.3d at p. 155, fn. 7.)

"Where reasonable men may differ, it is for the jury, subject to the control of the court, to determine whether, in the particular case, the conduct has been sufficiently extreme and outrageous to result in liability." (Alcorn v. Ambro Engineering, Inc. (1970) 2 Cal.3d 493, 499.) Since reasonable persons could differ here, a question of fact remains as to whether the Church's conduct was outrageous for purposes of this action. It follows that the Court of Appeal erred in affirming the summary judgment for the Church as to plaintiff's actions for intentional infliction of emotional distress.

IV. FALSE IMPRISONMENT

False imprisonment is "the unlawful violation of the personal liberty of another." (Pen. Code, § 236; see Parrot v. Bank of America (1950) 97 Cal.App.2d 14, 22 [definition of crime and tort the same].) "The tort of false imprisonment is the nonconsensual, intentional confinement of a person, without lawful privilege, for an appreciable length of time, however short." (City of Newport Beach v. Sasse (1970) 9 Cal.App.3d 803, 810.) A person is falsely imprisoned "if he is wrongfully deprived of his freedom to leave a particular place by the conduct of another." (Schanafelt v. Seaboard Finance Co. (1951) 108 Cal.App.2d 420, 422-423.)

Leal contends she was falsely imprisoned by the Church at Boonville, at Camp K, at Boulder, at Los Angeles, and

at various locations in San Francisco.[17] She admits she was theoretically free to depart at any time; she was not physically restrained, subjected to threats of physical force, or subjectively afraid of physical force. She insists, however, that her "imprisonment arose from the harm she came to believe would result if she left the community." That harm, specifically, was that her family "would be damned in Hell forever and they would forever feel sorry for having blown their one chance to unite with the Messiah and make it to Heaven."

The claim cannot survive constitutional scrutiny. Although Leal correctly asserts that false imprisonment may be "effected by . . . fraud or deceit" (Pen. Code, § 237), her theory implicates the Church's beliefs: it plainly seeks to make the Church liable for threatening divine retribution. As we stated earlier, such threats are protected religious speech (see Fowler v. Rhode Island, supra, 345 U.S. at p. 70; Van Schaick v. Church of Scientology of Cal., Inc., supra, 535 F.Supp. at p. 1139) and cannot provide the basis for tort liability. Accordingly, we hold the Court of Appeal correctly affirmed the summary judgment for the Church as to Leal's action for false imprisonment.

V. RESTITUTION

Molko seeks restitution of his $6,000 gift to the Church. His claim arises directly out of his fraud theory: he asserts that the Church deceived him into unknowingly submitting to coercive persuasion, thereby obtaining undue influence over him which it later used to extract the gift.

The Court of Appeal held that Molko could not challenge the validity of the gift without challenging the

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[17] Although Molko also alleged a cause of action for false imprisonment, he has chosen not to contest the Court of Appeal's affirmance of summary judgment for the Church on that action.

validity of his former beliefs, which is constitutionally forbidden. We disagree.[18] Molko's assertion is a natural extension of his fraud theory: he contends, in effect, that one of his damages from the fraud was the $6000 loss.

Undue influence is "the use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him." (Civ. Code, § 1575.) Stated another way, undue influence is "that kind of influence or *supremacy of one mind over another* by which that other is prevented from acting according to his own wish or judgment" (Bolander v. Thompson (1943) 57 Cal.App.2d 444, 448, italics added); it occurs when "one party uses [its] dominant psychological position in an unfair manner to induce the subservient party to consent to an agreement to which he would not otherwise have consented" (Calamari & Perillo, The Law of Contracts (2d ed. 1977) pp. 274-275).

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[18] Although circumstances sufficient to support such a claim occur infrequently, religiously motivated gifts have occasionally been set aside on a particularly strong showing of undue influence by religious advisors. (See, e.g., Estate of Bourquin (1958) 161 Cal. App.2d 289, 299-300 [will leaving bulk of estate to a church rest home was the result of undue influence of rest home employees, who held confidential relationship with testator as religious advisors].)

The Court of Appeal cited Estate of Supple (1966) 247 Cal.App. 2d 410, 414-415, to support its position. *Supple*, however, was not an undue influence case. In *Supple*, a lifelong church member left a portion of his estate to various church charities with which he had a longstanding association. His grandnephew challenged the will on the sole ground that the church's teachings were false, and hence the testator was in that sense tricked into leaving part of his estate to the church. (*Id.* at p. 412.) Such a direct attack on the truth or falsity of religious beliefs was clearly prohibited by the First Amendment. (United States v. Ballard, supra, 322 U.S. at pp. 86-88.) However, as we explained above in distinguishing Katz v. Superior Court, supra, 73 Cal.App.3d 952, Molko does not challenge the validity of his former beliefs. Therefore *Supple* is inapplicable.

We have already concluded, in the context of Molko's fraud claim, that a triable issue of fact exists as to whether Molko lost his ability to make independent decisions as a result of being deceived into submitting unknowingly to coercive persuasion. It would be odd indeed, then, if we did not find that a triable issue of fact exists as to whether, by means of the alleged deception, the Church established and used its dominant psychological position and its confidential relationship with Molko "for the purpose of obtaining unfair advantage over him" with regard to his $6,000 gift.

We do so find, and accordingly hold that the Court of Appeal erred in affirming the summary judgment for the Church as to Molko's claim for restitution.[19]

VI. THE CHURCH'S CROSS-COMPLAINT AGAINST MAXWELL

The Church alleged that Maxwell's deprogramming activities violated the federal and state civil rights of the Church and its members. (42 U.S.C. § 1985(3) [hereafter section 1985(3)]; Civ. Code, §§ 51.7, 52.) It also asserted a cause of action against Maxwell for full or partial indemnity, on the theory that he, by kidnapping and deprogramming Molko, had wholly or partially caused any damages for which the Church might be held liable to Molko.

The trial court sustained without leave to amend Maxwell's demurrers to all three causes of action, and entered judgments of dismissal for him. The Court of Appeal reversed the judgments of dismissal on the state and federal civil rights causes of action, holding that the court abused its discretion by refusing leave to amend the

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[19] Accordingly, we need not consider Molko's invitation to adopt the views of the Nebraska and Rhode Island supreme courts that gifts to religious leaders or advisors are *presumptively* made under undue influence. (*See* Guill v. Wolper (Neb. 1974) 218 N.W.2d 224, 235; Nelson v. Dodge (R.I. 1949) 68 A.2d 51, 55.)

complaint. Because it affirmed the summary judgment for the Church in the action by Molko and Leal, it did not review the dismissal of the Church's cause of action for indemnity.

A. *The Federal Claim* [20]

The Church alleged that Maxwell conspired with others to deprive it and its members of equal protection of the laws and of "equal privileges and immunities under the laws." It contended Maxwell's purpose was, inter alia, to prevent Church members from freely exercising their religious beliefs through interstate travel. The Church sought injunctive relief as well as compensatory and punitive damages. In its appeal to the Court of Appeal it abandoned its contention that it could assert free exercise claims under section 1985(3), but continued to assert it had representational standing to sue for a violation of its members' constitutionally guaranteed right to travel. (Zobel v. Williams (1982) 457 U.S. 55.) The Court of Appeal agreed and reversed the dismissal on that ground.

Maxwell offers three arguments why his demurrer to the Church's federal claim was properly sustained. As will appear, none is persuasive. First, he contends the Church failed to meet the second of three requirements for representational standing set forth in Hunt v. Washington Apple Advertising Comm'n (1977) 432 U.S. 333, 343. The requirement in question is that "the interests [that the organization] seeks to protect are germane to the organization's purpose." (*Ibid.*) Maxwell asks us to infer from that requirement a test of the Church's status as a bona fide religious organization: apparently he wishes to argue that the Church is a political rather

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[20] In this court Maxwell does not challenge the decision of the Court of Appeal as to the Church's claim under state civil rights law.

than religious organization, and that its members' right to travel is somehow not germane to the organization's true purpose. But the contention has no support in the law, and we decline to adopt such a novel reading of a federal statute.

Second, Maxwell contends his demurrer was properly sustained because a conspiracy to infringe First Amendment rights does not violate section 1985(3) unless either a state is involved in the conspiracy or the conspiracy aims to influence the state's activity. While the contention correctly states the Supreme Court's holding in Carpenters v. Scott (1983) 463 U.S. 825, 830, it overlooks the Court's further statement in *Carpenters* that in accordance with Griffin v. Breckenridge (1971) 403 U.S. 88, section 1985(3) *does* reach purely private conspiracies aimed at depriving persons of the constitutionally guaranteed right to travel. (Carpenters v. Scott, supra, 463 U.S. at pp. 832-833.) The Church alleges just such a conspiracy here.[21]

Third, Maxwell contends the Church's federal cause of action was barred by the state statute of limitations because it was subject to the one-year limitation period for personal injury claims set forth in Code of Civil Procedure section 340, subdivision (2). However, as the Court of Appeal correctly held, the Church seeks to amend its complaint to seek injunctive relief only as to what it

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[21] The *Carpenters* court declined to pass on whether section 1985(3) reaches conspiracies other than those motivated by racial bias. (463 U.S. at p. 835.) The Fourth Circuit, however, noting that "the lower federal courts have, almost without exception, extended the coverage of the statute to religious groups [citations]," has expressly held that a conspiracy against the Unification Church motivated by religious discrimination falls within the ambit of section 1985(3). (Ward v. Connor (4th Cir. 1981) 657 F.2d 45, 48; see generally Annot., Civil Liability for "Deprogramming" Member of Religious Sect (1982) 11. A.L.R.4th 228.) As Maxwell does not contest the Church's claim on this basis, we need not address this question of federal law.

alleges to be an ongoing conspiracy among Maxwell and the other cross-defendants. The statute of limitations does not begin to run in civil conspiracy cases until the last overt act of the conspiracy has been completed. (Wyatt v. Union Mortgage Co. (1979) 24 Cal.3d 773, 787.) Thus, if a continuing conspiracy is proved, the action is obviously timely; if no conspiracy is proved, injustice relief will be denied. The determinative issue is factual and cannot be resolved by demurrer.

B. *Indemnification*

As stated above, the trial court sustained Maxwell's demurrer to the Church's cause of action for indemnification, and entered a judgment of dismissal; the Court of Appeal, because it affirmed the summary judgment for the Church in plaintiffs' action for damages, did not address any of the issues raised in the Church's appeal from the judgment of dismissal. Because we reverse the summary judgment on the merits, however, those issues are no longer moot.

The Church bases its indemnification action on the theory that Maxwell, by kidnapping and deprogramming Molko, wholly or partially caused any damages for which the Church might be held liable to Molko. The Church contends, in other words, that if it is held liable to Molko as an intentional tortfeasor, it should be allowed to seek indemnification from Maxwell as a concurrent intentional tortfeasor.

Thus the Church asks us to consider an issue of first impression—whether the equitable indemnity doctrine, as set forth by this court in American Motorcycle Assn. v. Superior Court (1978) 20 Cal.3d 578, permits an intentional tortfeasor to obtain indemnity from concurrent intentional tortfeasors on a comparative fault basis. We must decline the invitation, however, because the facts in the present case would not support such an action even if it were otherwise permitted.

It is not sufficient, for purposes of indemnification, for a defendant simply to claim someone else caused all or part of the plaintiffs' damages. To state a claim for indemnification, a defendant must allege that the same harm for which he may be held liable is properly attributable—at least in part—to the alleged indemnitor. (See, e.g., Rest.2d Torts, § 886B, subd. (1): "If two persons are liable in tort to a third person for the same harm and one of them discharges the liability of both, he is entitled to indemnity from the other . . . .") If a defendant believes the plaintiff's injuries were the result of a different harm altogether, he may argue the point to the jury and escape liability if successful. Absent some claim of mutual liability for the same harm, however—under joint-and-several or vicarious liability principles, for example—an indemnification action will not lie. (*See* American Motorcycle Assn. v. Superior Court, supra, 20 Cal.3d 578 at p. 606 ["[W]e think it only fair that a defendant who may be jointly and severally liable for all of the plaintiff's damages be permitted to bring other concurrent tortfeasors into the suit."].)

The Church claims not that Maxwell shares responsibility for any harm the Church caused Molko through its alleged deception and coercive persuasion, but rather that Maxwell's kidnapping and deprogramming of Molko were the actual causes of Molko's damages—i.e., that Molko's damages were the result of a *different harm* than the one for which the Church might be held liable. Although the Church may freely attempt to convince the jury that Maxwell's actions rather than its own caused any damages Molko suffered, it does not allege that it and Maxwell are in some way mutually liable for the same harm; thus it does not state facts sufficient to support an indemnification action.

Accordingly, we leave for another day the question whether an intentional tortfeasor may obtain indemnity from concurrent intentional tortfeasors on a comparative fault basis.

VII. CONCLUSION

For the reasons given above, we conclude as follows: On the complaint, the judgment of the Court of Appeal is affirmed insofar as it affirms the summary judgment for the Church on the cause of action for false imprisonment, and reversed insofar as it affirms the summary judgment for the Church on the causes of action for fraud, intentional infliction of emotional distress, and restitution. On the cross-complaint, the judgment of the Court of Appeal is affirmed insofar as it reverses the judgment of dismissal for cross-defendant Maxwell on the cause of action for federal civil rights violations, and insofor as it implicitly affirms the judgment of dismissal for Maxwell on the Church's cause of action for indemnity.

MOSK, J.

WE CONCUR: LUCAS, C.J.
BROUSSARD, J.
ARGUELLES, J.
EAGLESON, J.
KAUFMAN, J.

CONCURRING AND DISSENTING OPINION BY ANDERSON, J.

I concur with the majority regarding the disposition of the false imprisonment cause of action as well as the claims raised in the cross-complaint, but respectfully disagree with the reversal of summary judgment in connection with the fraud, intentional infliction of emotional distress and the restitution counts. I am strongly persuaded that the imposition of tort liability for "heavenly deception" in proselytizing and for its ensuing "systematic manipulation of social influences" (religious persuasion) runs counter to established legal precedents and the free exercise clause of the First Amendment. Furthermore, imposition of liability in such cases constitutes bad legal policy, since it unnecessarily projects the court into the arena of divining the truth or falsity of religious beliefs. I respectfully suggest that the trial court's thorough analysis, and the Court of Appeal's well reasoned affirmance thereof correctly apply the law.

I. *Fraud*

Under well-settled law, the necessary elements of fraud are: (1) misrepresentation (false representation, concealment or nondisclosure); (2) knowledge of falsity (scienter); (3) intent to defraud (i.e., to induce reliance); (4) justifiable reliance; and (5) resulting damage. (*Seeger v. Odell* (1941) 18 Cal.2d 409, 411; 4 Witkin, Summary of Cal. Law (8th ed. 1974) Torts, § 446, p. 2711.) It is likewise recognized that in order to render the fraud actionable, the misrepresentation or nondisclosure must be not only the cause in fact (causa sine qua non), but also the legal or immediate cause of the damages. Indeed, the majority quite agrees: "Justifiable reliance exists when the misrepresentation or nondisclosure was *an immediate cause* of the plaintiff's conduct which alters his legal relations, and when without such misrepresentation or nondisclosure he would

not, in all probability, have entered into the contract or other transaction." (*Wennerholm* v. *Stanfod Univ. Sch. of Med.* (1942) 20 Cal.2d 713, 717; *Spinks* v. *Clark* (1905) 147 Cal. 439, 444, emphasis added.) However, contrary to the conclusion reached by the majority, I find appellants' fraud cause of action fatally defective for two fundamental reasons: (1) the record fails to show that the initial fraud committed by the proselytizers was relied upon by appellants at the crucial time of joining the Church; and (2) the immediate cause of appellants' damages was not the incipient fraud but rather the ensuing indoctrination and conversion (dubbed by the majority as "brainwashing"). However, the indoctrination achieved by persuasion absent physical force or violence is not unlawful; religious conversion is simply not subject to judicial review. It follows that neither of these questions create a triable issue of fact which defeats the grant of summary judgment.

A. *Reliance on Initial Misrepresentation*

In granting summary judgment on the fraud cause of action, the trial court found that appellants, by their own admissions, joined the Church because the "Association satisfied personal concerns and anxieties both were experiencing"; it did not find they joined in reliance on the initial misrepresentations of the recruiters. This finding of the trial court is well supported by the record.

Molko's deposition reveals that his reason for accepting the invitation to participate was to improve himself and to become a better person. As early as the second day spent in Booneville, Molko already felt involved and was attracted to the group because of the brotherly love experienced there. Although the regimented life was not entirely to his liking, he stayed there because: (1) he was thinking about the meaning of his life; (2) he was curious; and (3) he wanted to know people better, espe-

cially Bethie Rubenstein and Gloria LaGrasse who were "fascinating, intelligent—a joy to be with." On learning within less than two weeks that the group belonged to the "Moonies," Molko (while admittedly confused a bit) took a "wait and see" attitude, remained with the group and repeatedly rejected calls coming from friends and parents imploring him to quit.

Leal accepted the initial invitation also for personal reasons. She had little emotional and psychological support from her family and was longing for affection and understanding. She left San Diego, a "cold and impersonal" city in search of a community. She went to Booneville to "learn how a community gets together to actually accomplish something." By the fourth day she felt completely involved. She was attracted by the sincere, affectionate attention she received from the group and stayed there because she was happy and grew attached to the group which overwhelmed her with praise, love and promised to take care of her and provide all the things she had ever wanted. In addition, she was impressed by the commitment and hard work of the others, and was anxious to prove herself worthy of their attention. Also, she found the relinquishment of individual responsibility and the acceptance of a group identity to be true happiness, akin to "the joy of childhood." In her own words: "Departing from Booneville was prevented as a result of large doses of attention and listening and care such as that between highly expressive, loving friends or family."

Despite these undisputed facts the majority maintains that appellants' behavior following the initial fraud did not negate the element of reliance (i.e., the initial fraud was not "cured"); they conclude that as a result of the Church's initial "heavenly deception" (i.e., fraudulent conduct), appellants were placed in a situation where they were "brainwashed" and thereby deprived of their independent judgment. The majority predicates this

"brainwashing" theory primarily upon appellants' declarations that due to the rigid indoctrination, psychological and emotional pressure, they lost their ability to freely decide to stay with the group and, instead, they acted in a robot-like manner. Such conclusion fails to withstand critical analysis.

Under the widely adopted view, the fact that the religious belief does not originate in a voluntary choice does not, as a rule, raise a presumption of incapacity to affirm the belief as one's own. (Saphiro, *"Mind Control" or Intensity of Faith: The Constitutional Protection of Religious Beliefs* (1978) 13 Harv. Civ. Liberties L.Rev. 751, 789.) To the contrary, it has been said that "An intentional deception should not justify impinging upon a convert's ideas as long as the convert has the ability to affirm his faith after the deception is realized. If he retains his personhood (i.e., the capacity to evaluate the commitment) he can still adopt or ratify his belief as his own." (Saphiro, *"Of Robots, Persons and Protection of Religious Beliefs* (1982-1983) 56 So.Cal.L.Rev. 1277, 1295.) By illustration, Mr. Saphiro points out that if the proselytizer had offered merely a self-improvement course and the subsequent banquet and lectures in fact had aimed at converting the recruit to a religion, the deceptiveness of the introduction would be immaterial as long as the convert would be still capable of adopting or affirming his belief. (*Ibid.*)

The evidence before us, including appellants's depositions, clearly indicates that the Church's indoctrination did not render appellants mindless puppets or robot-like creatures. Instead, it shows that both before and after the disclosure of the group's true identity, both appellants retained their ability to think, to evaluate the events and to exercise their independent judgment. For example, the record reveals that on the first two days in Booneville Molko became so dissatisfied with the regimented life that he decided to return to San Francisco.

He discussed his decision with two other members of the group. While he was advised that he was free to leave, he decided to stay because he was persuaded that it was to his own benefit to do so. Also, during the first week in Booneville Molko expressed with other people (although in private) his resentment about the lectures and regimentation and on noticing that he was being followed by Joe Taylor, a Church member, he violently confronted him, threatening to smash him in the face. After learning that the group was connected with the Church, Molko did not simply acquiesce, but rather consulted Gloria, and his decision to stay was again the result of an evaluation of this turn of events. Lastly, despite all the lectures, discussion and other forms of indoctrination, Molko still doubted that Reverend Moon was the new Messiah and he shared his doubts with other Church members as well, including Gloria and Victoria.

The deposition testimony of appellant Leal is likewise replete with facts indicating that her joining the Church did not rest upon reliance on the initial representation, but rather her conscious evaluation and adoption of the Church's teachings. In view of his sworn testimony, the unsupported allegations of brainwashing in appellants' pleadings and declarations should not be deemed sufficient to raise that triable issue of material fact which requires reversal of the grant of summary judgment.

B. *Conversion is the Immediate Cause of Damages*

Reversal of summary judgment is improper for the additional reason that the immediate cause of damages was not the incipient fraud, i.e., heavenly deception, but rather the ensuing indoctrination effected by "brainwashing" which ultimately resulted in appellants' conversion. That the gist of appellants' fraud complaint was that the conversion was achieved by actionable "brainwashing" is manifest. Indeed, the majority so defines the issue: "Molko and Leal therefore contend that a triable issue

of fact remains as to whether the Church brainwashed them prior to disclosing its identity. If the answer is affirmative, they argue, they have established justifiable reliance." Again, the majority declares that appellants' "statements are consistent with the contention that they were deceived into a situation in which they were then brainwashed" and summary judgment on the fraud count must be overturned because the brainwashing theory advanced in appellants' declarations a triable issue of fact. This same notion not unsurprisingly has its genesis in appellants' briefs. For example, Molko asserts in his opening brief that "By means of deceits and deceptions utilized in order to place plaintiff in Boon[e]ville, plaintiff was abruptly thrust into an environment directed entirely toward the *conversion* of plaintiff's allegiance to accept Sun Myung Moon as the Messiah and to become a member of the Unification Church . . . . The *conversion* of plaintiff occurred in an unusual place." (Emphasis partially added.) Amici likewise emphasize that the immediate cause of damages was the process of conversion which has been known by many labels—brainwashing, thought reform, coercive persuasion, etc.

Identification of the indoctrination (i.e., "brainwashing") and the conversion as the critical issues for determining the applicability of summary judgment carries far-reaching legal significance. For under settled law the indoctrination methods employed in obtaining conversion (including coercive persuasion, mind control and/or brainwashing) are not actionable per se; religious conversion is not subject to judicial scrutiny regardless of the methods used because such scrutiny necessarily entails the questioning of religious faith—scrutiny that is absolutely forbidden by the First Amendment. Moreover, even if judicial scrutiny were permitted, governmental interference in this case is not warranted.

(1) *The Introduction is Not Actionable*

The primary cases holding that religious indoctrination, even if achieved by "brainwashing," is not tortious if unaccompanied by physical force or threat are *Lewis* v. *Holy Spirit Assn. for Unification* (D. Mass. 1983) 589 F.Supp. 10; *Meroni* v. *Ho'y Spirit Assn. for Unification* (1986) 506 N.Y.S.2d 174; and *Application of Conversion Center* (Pa. 1957) 130 A.2d 107.

The *Lewis* plaintiff, a former member of the Unification Church, brought a tort action against the Church alleging, inter alia, that he was subjected to brainwashing and that as a result thereof he suffered psychiatric disorders. In dismissing plaintiff's tort claims, the court stated: "Both of the plaintiff's claims in tort are seriously flawed. Indoctrination and initiation procedures and conditions of membership in a religious organization are generally not subject to judicial review [citations]. Similarly, the plaintiff has not indicated any precedent for recognition of the tort of brainwashing, and my research has revealed none." (*Lewis* v. *Holy Spirit Assn. for Unification*, *supra*, 589 F.Supp. at p. 12.)

In *Meroni*, the plaintiff's son entered the training and indoctrination program of the Unification Church; after one month he left the program and committed suicide. In an action against the Church plaintiff purported to state causes of action in tort contending that the decedent, an emotionally disturbed youth, was subjected to highly programmed behavior techniques (such as intensive physical exercises, isolation, lectures, confession, strict work and study schedules) as a result of which he was brainwashed. In dismissing the action the court opined that the indoctrination methods of the Church were not tortious. "The conduct of the defendant Unification Church . . . which the plaintiff seeks to classify as tortious, constitutes common and accepted religious proselytizing practices, e.g., fasting, chanting, physical exercises, cloistered

living, confessions, lectures, and a highly structured work and study schedule. To the extent that the plaintiff alleges that the decedent was 'brainwashed' as a result of the church's program, this claim must be viewed in the context of the situation as a whole, i.e., as a method of religious indoctrination that is neither extreme nor outrageous . . . ." (*Meroni* v. *Holy Spirit Assn. for Unification*, *supra*, 506 N.Y.S.2d at p. 177.) In finding the brainwashing nontortious in the absence of physical violence or mental torture, the court remarked: "It is important to note that no facts are set forth which would warrant the conclusion that the plaintiff's decedent was falsely imprisoned by the appellant or that he was subjected to any form of violence, or physical or mental torture, as such. The claim of *brainwashing* is based upon the activities heretofore described, which as previously noted, are *commonly used by religious and other groups, and are accepted by society as legitimate means of indoctrination. They are not classifiable as so* extreme or outrageous, or *offensive to society, as to incur liability therefor.*" (*Id.*, at pp. 177-178, emphasis added.)

In *Application of Conversion Center*, *supra*, 130 A.2d 107, the court recognized that persuasion is an integral part of many religious organizations and a positively protected aspect of the free exercise of religion: "The 14th Amendment of the Constitution of the United States which incorporates the First Amendment, guarantees the free exercise of religion . . . . Not only is a citizen of this country entitled to the free expression of his religious beliefs, but *he may by peaceful persuasion endeavor to convert others thereto*, and we are aware of no bar to individuals organizing to effectuate their guaranteed rights in this regard. . . Propagation of belief—or even of disbelief in the supernatural—is protected whether in church or chapel, mosque or synagogue, tabernacle or meetinghouse. . ." (*Id.*, at p. 110, emphasis added.)

(2) *The Conversion is Not Actionable*

The majority concedes that the free exercise clause of the First Amendment provides absolute protection for religious beliefs (*Cantwell* v. *Connecticut* (1940) 310 U.S. 296, 303-304); that the government cannot discriminate against individuals or groups because they hold views abhorrent to the authorities (*Fowler* v. *Rhode Island* (1952) 345 U.S. 67, 70); and that while the court can inquire into the sincerity of an individual's beliefs, it may not judge the truth or falsity of those beliefs (*United States* v. *Ballard* (1944) 322 U.S. 78, 86-88). However, the majority concludes that while religious belief is absolutely protected, religious conduct is not (*Sherbert* v. *Verner* (1963) 374 U.S. 398, 402-403; *People* v. *Woody* (1964) 61 Cal.2d 716, 718); that conduct even if religiously motivated is subject to regulation for the protection of society (*Cantwell* v. *Connecticut*, *supra*, 310 U.S. at p. 304); and that the Church's initial fraud which led to the brainwashing of appellants was conduct which, under the balancing test required by the First Amendment, can be penalized with tort sanctions based upon a compelling state interest (*Wisconsin* v. *Yoder* (1972) 406 U.S. 205, 214 221-235).

I respectfully submit that this reasoning is flawed. To begin with, the conduct which according to the majority constitutes a triable issue of fact is not only the initial fraud (an act clearly subject to proof), but also the subsequent "brainwashing" and conversion—matters comprising not only sociological or psychological phenomena, but also involving intangible elements of religious belief. It follows that brainwashing and conversion are so inextricably intertwined with religious faith that they cannot be scrutinized, much less proven, without questioning the authenticity of the religious teachings of the Church. (See detailed discussion, *infra*.) Such inquiry is absolutely proscribed by the free exercise clause of the First Amendment.

The proposition that the act or conduct of a religious organization or its members is immune from judicial scrutiny if the proof thereof calls into question the truth or falsity of religious faith is well established in case law as well as in legal commentary.

United States v. *Ballard*, *supra*, 322 U.S. 78, the leading case defining the parameters of the constitutional protection of religious faith, dealt with prosecution of religious fraud. Therein it was alleged that respondents, founders of the "I am" movement, fradulently represented that they were divine messengers; that they had miraculous powers to heal all diseases and, in fact, had cured hundreds of afflicted people; and that as a result of these misrepresentations, they obtained money from the public through the mail. The trial court excluded from jury consideration the issue of the truth or falsity of respondents' claim of divine designation and miraculous powers, and the case was submitted on the sole issue of whether respondents made those claims in good faith. In approving the trial court's ruling, the Supreme Court reasoned: "Freedom of thought, which includes freedom of religious belief, is basic in a society of free men. [Citation.] It embraces the right to maintain theories of life and of death and of the hereafter, which are rank heresy to followers of the orthodox faiths. Hersey trials are foreign to our Constitution. *Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs.* Religious experiences which are as real as life to some may be incomprehensible to others. Yet the fact that they may be beyond the ken of mortals does not mean that they can be made suspect before the law. Many take their gospel from the New Testament. But it would hardly be supposed that they could be tried before a jury charged with the duty of determining whether those teachings contained false representations. The miracles of the New Testament, the Divinity of Christ, life after death, the power of

prayer are deep in the religious convictions of many. If one could be sent to jail because a jury in a hostile environment found those teachings false, little indeed would be left of religious freedom. The Fathers of the Constitution were not unaware of the varied and extreme views of religious sects, of the violence of disagreement among them, and of the lack of any one religious creed on which all men would agree. They fashioned a charter of government which envisaged the widest possible toleration of conflicting views. *Man's relation to his God was made no concern of the state. He was granted the right to worship as he pleased and to answer to no man for the verity of his religious views. The religious views espoused by respondents might seem incredible, if not preposterous, to most people. But if those doctrines are subject to trial before a jury charged with finding their truth or falsity, then the same can be done with the religious beliefs of any sect. When the triers of fact undertake that task, they enter a forbidden domain.*" (*Id.*, at pp. 86-87, emphasis added.)

Another analogous case involving religiously motivated fraud is *Founding Church of Scientology* v. *United States* (D.C. 1969) 409 F.2d 1146. In *Founding Church*, appellants (Church of Scientology and its adherents) were charged with false and misleading labeling under the Food, Drug and Cosmetic Act (U.S.C., § 301 et seq.), based upon their representation that the Hubbard Electrometer (E meter) can cure both bodily and mental ailments.[1] The government seized the electric instruments and religious literature describing church doctrine and alleged that they were the instrumentalities by which the fraud was committed. At trial the government introduced

[1] Scientology teaches that by "clearing" or "auditing" the mind, one can improve both spiritual and bodily health. The E meter plays an essential role in the process of auditing. The vast literature describing scientology claims, inter alia, that many bodily ailments, including cancer, may be cured by auditing.

expert evidence showing that the E meter was of no use in the diagnosis and treatment of any disease or mental disorder (i.e., that the church's representations were false), and it also introduced thousands of pages of scientology literature relevant to the issue of mislabeling. Based thereon, the jury found appellants guilty of false and misleading labeling. The Court of Appeal reversed in concluding that under *Ballard* expert testimony was not admissible to disprove appellants' reprerentations and that the religious Scriptures of the church were not subject to courtroom evaluation. Significantly enough, the court noted: "The statements concerning the powers of auditing over the ills of mind and body are not readily separable from general statements of scientological doctrines concerning the nature of man and the relationship of his mind to his body. Many will find these doctrines, those which relate to health as well as those which do not, absurd or incoherent. But the *Ballard* case makes suspect the legal inquisition of such doctrines where they are held as religious tenets." (*Id.*, at p. 1159.)

Even more analogous to this case is *Katz* v. *Superior Court* (1977) 73 Cal.App.3d 952, in which the parents of Unification Church members brought an action for conservatorship: they claimed that their children were subjected to coercive persuasion and brainwashing through food and sleep deprivation, isolation, fear tactics, use of guilty feelings and indoctrination; they offered psychiatric and psychological expert evidence to establish such claims. The *Katz* court was unwilling to inquire into the merit of the assertions because it felt the evalution of evidence relevant to whether the change in the individual's life style was effected by brainwashing or religious faith, necessarily requires an investigation and questioning of the validity of that faith. (*Id.*, at pp. 987-988.)

The majority's effort to distinguish *Katz* from the case at bench is not persuasive. While *Katz* arose, indeed, in a somewhat different legal setting (i.e., the ac-

tion was brought by the parents rather than ex-church members; they were seeking conservatorship orders under Prob. Code, § 1751; and their purpose was to deprogram their children, etc.), the pivotal issue was the same: were the children brainwashed by the church and was their brainwashing subject to proof in a court proceeding?

I respectfully disagree with the majority's suggestion that the primary assertion here, as opposed to *Katz*, is the initial fraud in recruiting, and is therefore conduct which can be judicially scrutinized. From their language, however, it clearly appears that the wrongful conduct which is a the core of the controversy is the fraudulently induced brainwashing.[2] However, as the majority admits, the first part of the issue (i.e., the knowing representation of the Church's identity and the intent to induce appellants to participate in the Church's activities) is conceded by the Church. The remaining triable issue of fact is therefore limited to the alleged "brainwashing" which resulted in appellants' conversion and their joining the Church. What fact is it that the majority remands to be determined at trial? The same fact that *Katz* found immune from judicial scrutiny, i.e., was the conversion (or "brainwashing") induced by coercive indoctrination or by religious persuasion? That such question is not for mortal courts to resolve is unequivocally answered by *Katz*: No such proof or judicial inquiry is possible without questioning the person's underlying faith—an inquiry which is absolutely forbidden by the First Amendment.

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[2] In the words of the majority: "The legal question is simply whether a religious orrganization can be held liable on a traditional cause of action in fraud for deceiving nonmembers into subjecting themselves, without their knowledge or consent, to *coercive persuasion*" and "The challenge is to the Church's practice of misrepresenting or concealing its identity in order to bring unsuspected outsiders into its *highly structured environment*." (Emphasis added.)

The teachings of *Katz* that "brainwashing" and religious conversion are not really distingiushable; that the methods used in each are either identical or very similar; and that proof of the existence of each is virtually identical are well illustrated by the present case. The expert testimony here was offered to show that the brainwashing of appellants was achieved by "a systematic manipulation of social influences" which consisted mainly of the following: (1) control over the social and physical environment; (2) separation of the recruits from the outside world (including friends and family members); (3) influencing individual behavior through rewards, punishments and experiences; (4) oppression of criticism of the Church; and (5) attainment of a special uniform state of mind. However, as demonstrated below, all of these methods are used by the more widely accepted and/or tolerated churches in effecting religious conversion.

The effect of conversion, generally speaking, is spiritual rebirth—that is, attainment of a new life. The first step in that direction is a separation from the previous environment to a place where one can meditate and contemplate without distraction. Our world's numerous monasteries and convents demonstrate how retreat and isolation can promote single-minded devotion to God. The separation from friends and family members may be an important step in achieving this goal. Jesus Christ is quoted as saying: "He who loves father or mother more than mē is not worthy of me." (Matthew, 10:34-38.) The Mennonites likewise teach that true Christians must be prepared to take upon themselves the cross of Christ, and forsake father, mother, husband, wife, children, possessions and the self, for the sake of the testimony of His Holy Word when the honor and praise of God require it. (J. Wenger, *Glimpses of Mennonite History and Doctrine* (2d ed. 1947).) Although transcending one's family may be traumatic and painful, it is sometimes an essential ele-

ment in the pilgrimage of faith. The guilt and awareness of sin also may be an important factor leading to conversion. The promise of salvation and the threat of damnation are the very foundation of the life of the devout. Ascetic, regulated life, hard work, fasting and giving up earthly pleasures are also parts of many religious teachings aimed at spiritual purity and pleasing God. The dogmatic approach and intolerance of criticism are not uncommon with established religions which profess that divine truth is revealed in holy Scriptures, church dogmas and in *ex cathedra* declarations of anointed leaders (e.g., papal infallibility in the Catholic Church) which is not to be questioned by faithful followers. Finally, the introverted view forsaking interest in the outside world necessarily flows from the religious teaching that one must separate himself or herself from the world dominated by Satan and his evil forces in order to join and serve God's kingdom.

Indeed, what this expert evidence characterizes as indicia of brainwashing or mind control, might very well be equated with the more popularly accepted symptoms of genuine religious conversion. Religious behavioral change induced by the mystery of faith cannot be proved or disproved by secular science, which limits its scope of inquiry to tangible, rational and logical phenomena, comprehensible and explainable by human reasons. As Mr. Saphiro states in his essay: "Religious beliefs—whether held by adherents to new sects or by 'mainstream' believers—may not be dictated by societal norms. Such norms can easily encourage labels that transform religious beliefs into illnesses. 'A religion becomes a cult; proselytization becomes brainwashing; persuasion becomes propaganda; missionaries become subversive agents; retreats, monasteries, and convents become prisons; holy ritual becomes bizarre conduct; religious observance becomes aberrant behavior; devotion and meditation become psychopathic trances.'" (Saphiro, *Of*

Robots, Persons and Protection of Religious Beliefs, *supra*, 56 S.Cal.L.Rev. at pp. 1316-1317, fn. omitted.) A similar analysis has been advanced by Justice Jackson: "[religious] experiences, like some tones and colors, have existence for one, but none at all for another. They cannot be verified to the minds of those whose field of consciousness does not include religious insight. When one comes to trial which wins on any aspect of religious belief or representation, unbelievers among his judges are likely not to understand and are almost certain not to believe him. . . . Prosecutions of this character easily could degenerate into religious prosecutions." (*United States* v. *Ballard*, *supra*, 322 U.S. at pp. 93, 95 [dis. opn. of Jackson, J.].)[3]

(3) *The Church's Conduct is not so "outrageous" as to be Subject to Governmental Regulation*

Case law teaches that overt acts or conduct connected with the exercise of religion are subject to governmental interference only if the conduct poses *substantial* threat to the public safety, peace or order. As the Supreme Court stated: "'*only the gravest abuses, endangering paramount interest* give occasion for permissible limitation.'" (*Scherbert* v. *Verner*, *supra*, 374 U.S. at p. 406,

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[3] The trial court granting summary judgment for defendants eloquently voiced this same concern: "The declarations of Dr. Singer and Dr. Benson reveal that both doctors rest their opinions in large part upon the view that Defendants' recruitment techniques involve 'systematic manipulation of social influences' which, both doctors conclude, lead Plaintiffs to make choices they would not have made in the 'free exercise of (their) own will and intellect.' But *these are not statements which are either true or false*; they are veiled value judgments concerning the entire outlook of the Unification Church. *What is 'systematic manipulation' to some may be the only true outlook to others.* . . . [¶] Testing the uncontroverted facts here by the principles applicable to regulation of acts of religious organizations and their members, as *Katz* requires, imposition of liability cannot be constitutionally counteranced." (Emphasis added, fns. omitted.)

emphasis added.) This was reiterated in *Wisconsin* v. *Yoder, supra*, 406 U.S. at p. 215: "Only those *interests of the highest order* and those not otherwise served can overbalance legitimate claims to the free exercise of religion." (Accord *Thomas* v. *Review Bd. Ind. Empl. Sec. Div.* (1981) 450 U.S. 707, 717-718, emphasis added.)

The majority opinion rests on a theory of fraudulently induced brainwashing. However, the conduct of "brainwashing" itself is not actionable because that method is commonly employed by religious groups, and it fails to constitute that outrageous conduct which goes beyond the limits of social toleration. (*Lewis* v. *Holy Spirit Assn., supra*, 506 N.Y.S.2d 174; see also *Christofferson* v. *Church of Scientology* (Ore. 1981), 644 P.2d 577, 584.) Thus, the critical issue is whether the act of brainwashing becomes tortious because it was preceded by the wrongful act of "heavenly deception" employed in recruiting.

It bears emphasis, and indeed the majority concedes, that the claimed deceptions, although secular on the surface, are clearly "rooted in religious belief." (*Wisconsin* v. *Yoder, supra*, 406 U.S. at p. 215.) It is settled that the Constitution guarantees not only the free exercise of religion, but also protects certain acts undertaken in furtherance of these religious beliefs. Included among these acts are the proselytizing and indoctrination activities of religious organizations. As explained in *McDaniel* v. *Paty* (1978) 435 U.S. 618, 626: "the right to free exercise of religion unquestionably encompasses the right to preach, proselyte and perform other similar functions." *Turner* v. *Unification Church* (R.I. 1978) 473 F.Supp. 367 further teaches that indoctrination and the motivation of one who joins a religious group usually cannot be judicially scrutinized and that only "the 'operational activities' of a religion, those activities that are

not solely in the ideological or intellectual realm, [that] are subject to judicial review and may be regulated to achieve a sufficiently important state objective. [Citations.]" (*Id.*, at pp. 371-372.) The examples listed by the majority for the permissibility of government interference with religious affairs are consistent with *Turner* inasmuch as they all involve operational activities of the religious organization (i.e., law against polygamy, distribution of religious literature, compulsory vaccinations, license for religious parades, denial of tax exempt status, etc.), rather than intellectual or doctrinal matters, such as proselytizing and indoctrination.

Thus, a persuasive argument may be made that the principal wrong here claimed (i.e., "heavenly deception" in recruiting) is not subject to government intervention at all, because it includes doctrinal matters rather than operational activities. But even if we assume that such acts are purely "secular" in nature and may properly be regulated by government, they fail to amount to an abuse of such magnitude that would justify government interference under the strict balancing test prescribed by law. This is so because the First Amendment ensures wide protection for religious persuasion which may encompass not only exaggeration, but also outright falsehood. As stated in *Cantwell* v. *Connecticut*, *supra*, 310 U.S. at p. 310: "*In the realm of religious faith*, and in that of political belief, sharp differences arise. In both fields the tenets of one man may seem the rankest error to his neighbor. *To persuade others to his own point of view, the pleader*, as we know, at times, *resorts to exaggeration*, to vilification of men who have been, or are, prominent in church or state, *and even to false statement.* But the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy." (Emphasis added.)

In sum, I am firmly convinced that since "heavenly deception" and its ensuing "brainwashing," fail to constitute those gravest abuses, this court is powerless to impose tort sanctions thereon.

Finally, I find an additional reason for holding that imposition of tort sanctions is particularly inappropriate in the present instance. Case law emphasizes that only a compelling governmental interest supported by *ample evidence* can justify state regulation of religious practices. (*Wisconsin* v. *Yoder*, *supra*, 406 U.S. at pp. 215, 224-225.) In the case at bench, the State of California has made no claim that such governmental interest exists, nor has it enacted any statute or regulation purporting to restrict the practices at issue. When scrutinizing conduct which is ostensibly subject to constitutional protection and which can be regulated only by showing a compelling state interest, the judiciary should tread cautiously in independently *creating* such governmental interest without any prior consideration by the Legislature. The Legislature is far better equipped than this court to undertake the factual investigation and to formulate the social policies which justify restrictions on exercising religious freedoms. Indeed, in the overwhelming majority of cases courts have merely *upheld* state regulations curbing religious conduct rather than *creating* such regulation. The majority's creation of this new tort liability in such an historically heretofore sensitive area, without either legislative initiative or guidance, constitutes judicial activism of the first degree.

II. *Intentional Infliction of Emotional Distress*

The elements of a cause of action for intentional infliction of emotional distress are: (1) outrageous conduct by the defendants; (2) intention to cause or reckless disregard of the probability of causing emotional distress; (3) severe emotional suffering; and (4) actual and proximate causation of the emotional distress.

(*Newly* v. *Alto Riviera Apartments* (1976) 60 Cal.App. 3d 288, disapproved on other grounds in *Marina Point, Ltd.* v. *Wolson* (1982) 30 Cal.3d 721, 740, fn. 9; Rest.2d Torts, § 46.) The conduct is deemed extreme and outrageous when "it exceeds all bounds of decency usually tolerated by a decent society, [and is] of a nature which is calculated to cause, and does cause, mental distress." (*Cole* v. *Fair Oaks Fire Protection Dept.* (1987) 43 Cal.3d 148, 155, fn. 7.) In order to successfully resist a motion for summary judgment the plaintiff must sustain each element of the cause of action; conversely, the defendant is entitled to summary judgment if proof of any one element is lacking. (*Sationers Corp.* v. *Dun & Bradstreet* (19650 62 Cal.2d 412, 417.)

Respondents herein contended that the emotional distress cause of action was inherently defective because the Church's conduct was not outrageous within the meaning of the law. The majority has rejected this argument by finding that the very same wrong (i.e., the fraudulent inducement of appellants into an atmosphere where they could be brainwashed), served as the foundation of both the fraud and the emotional distress causes of action because the conduct complained of was both extreme and outrageous. I respectfully submit that the conclusion of the majority is erroneous and unsupported by legal authorities.

As discussed above, appellants failed to state actionable wrong on the fraud count. A fortiori, the same allegedly fraudulent conduct cannot furnish the legal premise for the emotional distress cause of action.

But even if the fraud cause of action were valid, it would not, ipso facto, constitute outrageous conduct giving rise to recovery for causing severe emotional distress. The bootstrapping reasoning of the majority that the very same fraudulent conduct automatically produces a double cause of action (i.e., for fraud as well as for

intentional infliction of emotional distress) has been unequivocally rejected by persuasive case authorities.

For example, in *LeCruz* v. *Dean Witter Reynolds Inc.* (E.D. Ark. 1984) 585 F.Supp. 753, plaintiff brought an action for fraud and intentional infliction of emotional distress growing out of defendant's intentional misrepresentation and wilful concealment in connection with selling securities. The court rejected plaintiff's emotional distress claim by stating: "The Court recognizes that deception and fraud associated with the sale of securities can, on occasion, create emotional distress. Moreover, a broker's repeated use of such unsavory business methods purely in the pursuit of exploitation and financial gain can offend the conscience of the average citizen. *Yet . . . mere fraud in connection with the sale of securities does not ipso facto make out a prima facie case for intentional infliction of emotional distress. Unless the defendant's acts are truly outrageous, an action for intentional infliction of emotional distress will not lie.*" (*Id.*, at p. 766, emphasis added.)

In referring to Restatement Second of Torts section 46, comment d, the court emphasized that "Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." (*LeCruz* v. *Dean Witter Reynolds Inc.*, *supra*, 585 F.Supp. at p. 764.)

In *Barrett* v. *Farmers & Merchants Bank* (Ala. 1984) 451 So.2d 257, plaintiff instituted an action against defendant bank and its vice president to recover damages for wantonness, outrage, fraud and conversion in connection with the payment of life insurance policy proceeds. In ruling against plaintiff, the court held that the tort of outrageous conduct was not established by a showing of mere fraud; rather, it should have been shown that defendant's conduct was such as not to be tolerated in a civilized society. (*Id.*, at pp. 263-264.)

In *Christofferson* v. *Church of Scientology, etc., supra*, 644 P.2d 577, a case factually close, plaintiff complained that defendant church took control of her mind and forced her into life service by way of fraudulent representations. In rejecting plaintiff's claim premised on intentional infliction of emotional distress, the court emphasized: "Plaintiff was recruited and indoctrinated into the Church of Scientology. That recruitment and indoctrination . . . were not so very different than might be used by any number of organizations. She joined the group voluntarily, albeit, as she claims, on the basis of misrepresentations made to her. However, she continued to participate and maintained her involvement for whatever reason within actionable threat or coercion by defendants." (*Id.*, at pp. 509-591.) "If misrepresentations were made regarding the benefits or nature of Scientology . . . her remedy would be for fraud, not outrageous conduct." (*Id.*, at p. 590.)

And finally, in *Meroni* v. *Holy Spirit Assn. for Unification, supra*, 506 N.Y.S.2d 174, the court was confronted with the nearly identical issue, i.e., whether brainwashing by defendant Unification Church constituted outrageous conduct rendering it liable for intentional infliction of emotional distress. In finding it did not, the court emphasized that no outrageous conduct has been presented inasmuch as "The plaintiff has failed to demonstrate that the recruitment and indoctrination techniques used by the appellant, which are similar to those used by a number of other organizations 'go beyond all possible bounds of decency, and [are] to be regarded as atrocious, and utterly intolerable in a civilized community' . . . ." (*Id.*, at p. 177.)

III. *Restition*

Finally, I find myself in profound disagreement with the reversal of summary judgment on the restitution count. The majority's ruling as to this issue rests on the theory of fraud (fraudulent inducement to facilitate

brainwashing) and undue influence.[4] However, neither of these theories support the cause of action at issue.

The uncontroverted evidence provided by Molko clearly demonstrates that he made the gift of $6,000 out of a then held religious belief. Thus, Molko explained that he gave the money to the church to please God, the Heavenly Father, and that he had not asked that the money be returned while a member of the Church, because he had been afraid of the evil forces and felt guilty of demanding back something he had given to God.[5] I quite agree with the trial court's finding: "Care-

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[4] The majority also mentions breach of confidential relationship by the Church as a potential basis for restitution. However, emphasis on the latter aspect does not add a new dimension to the cause of action because under well-settled law breach of fiduciary or confidential relationship is constructive fraud (i.e., a subspecies of fraud). (Code Civ. Proc., § 1573; *Damon* v. *Robert A. Klein & Co., Inc.* (1931) 111 Cal.App. 310, 315-316; *Barrett* v. *Bank of America* (1986) 183 Cal.App.3d 1362, 1369.)

[5] The pertinent part of the record reads as follows: Molko was told (and at that time he believed) that "The Heavenly Father is asking to help us . . ."; that "[y]ou are giving a benefit to God and he would look favorably on that"; "that it was tax time and that the church was in desperate need of funds, and that it would be most—that the Heavenly Father would really appreciate, and really look favorably on seeing me give the money to the church . . ."; and "[t]hat you gave God money and then God, used your money rather than you using your money, and it worked better that way. In other words, you give your money to God and then God can distribute your money. And that way, the spiritual world can work for you."

The reason Molko did not ask for the return of his gift is reflected by the following excerpts: "Q. Did you ever feel that you should ask for the money back in order to— [¶] A. Yes, I thought about that. [¶] Q. But you never asked for it back. [¶] A. The situation was such that I—there was too much guilt and too much fear to ask. You just don't ask something like that. [¶] Q. What in particular were you afraid of happening if you did not—if you did ask for the money back? [¶] A. That something evil would happen to me. [¶] Q. You were afraid that by asking for your

ful review of Mr. Molko's deposition testimony negates the conclusionary allegations contained in the Complaint." Molko made his gift after careful consideration and consultation with one of the two Church members in whom he had the greatest confidence.[6] That he did not part with all his savings further negates the conclusionary allegations of undue influence in his complaint and undisputedly establishes the gift as a product of his free will.[7]

Since this gift was indisputably prompted by religious beliefs, and the issue of fraudulent inducement cannot be determined without inquiring into the truth or falsity of such beliefs, the theory of fraud as a ground justifying restitution cannot be judicially entertained without transgressing the free exercise clause of the First Amendment. (See detailed discussion, *supra.*) This same reasoning is equally applicable to the undue influence theory of recovery; as with the theory of fraudulent inducement, it is so intricately interwoven with religiously held beliefs that it cannot be proven without questioning the verity of underlying religious doctrines. (*Estates of Supple* (1967) 247 Cal.App.2d 410.)

That civil courts may not entangle themselves in religious disputes arising between disgruntled ex-church

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money back from the church, that something evil— [¶] A. No, not something— [¶] Q. —would happen to you? [¶] A. You see, some evil force. You have to understand, I really believed that there was evil forces lurking around. And that if I disturbed the spiritual world enough, that something could happen. I believed that. And therefore, I felt a terrible sense of guilt and fear to ask for something that I had supposedly given to God."

[6] He testified that she told him she "thought I should do what I thought was best' and "was pretty much leaving it up to me."

[7] When referring to the several thousand dollars which were available to him and which he did not disclose to Church members, he stated, "I drew the line. . . . They were quite under my control, but they stayed where they were."

members and the Church, is well supported by case law as well as by legal scholars. In *Wilson* v. *Jones* (1872) 80 U.S. 679, 731, the United States Supreme Court emprasized: " 'the judicial eye cannot penetrate the veil of the church for the forbidden purpose of vindicating the alleged wrongs of excised members; when they become members they did so upon the condition of continuing or not as they and their churches might determine, and they thereby submit to the ecclesiastical power and cannot now invoke the supervisory power of the civil tribunals.' " In *Founding Church of Scientology* v. *United States*, *supra*, 409 F.2d 1146, speaking to the same issue, the court stated: "under *Ballard* it seems unlikely that a disgruntled former adherent could sue a church for fraud and deceit because it had collected money from him on the basis of allegedly 'false' doctrines . . . ." (*Id.*, at p. 1156, fn. 32.)

Estate of Supple, *supra*, 247 Cal.App.2d 410, 414, reaffirms that religious gifts made to a church cannot be set aside by a court on the grounds of fraud or undue influence because the entertainment of such issues is foreclosed by the constitutional guarantees of religious freedom contained in the First Amedment and applied in *Ballard*.[8]

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[8] I disagree with the position of the majority that the complaint in *Estate of Supple* was not based upon fraud and undue influence; it clearly was. That opinion states: "It was also alleged that all of the above representations [i.e., that there are Heaven and Hell, eternal award and punishment depending on earthly conduct, etc.] were in fact false and untrue, constituting childish superstitions incompatible with man's advanced position in science and technology, and that *the charitable beneficiaries who made these representations were guilty of unduly influencing the testator and were also guilty of fraud* because they had made positive assertions which, although they believed them to be true, were not warranted by the information which they had (Civ. Code, 1572, subd. 2) and because they had breached a duty which, without an actually fraudulent intent, gained them an advantage by misleading the

Finally, Professor Tribe, a highly respected constitutional scholar, fearing entanglement with church affairs, expressed his concern thusly: "Once it is conceded that first amendment values are unacceptably compromised when civil courts undertake to settle religious issues, it becomes clear that allowing a legal determination about property or some other secular matter to turn on a court's answer to a religious question represents a path fraught with peril: the path is one along which unsatisfied former believers could drag the civil courts into the theological thicket by the simple expedient of suing for a refund of their prior donations to a religious organization. . . . The same is true when a church contributor seeks return of a donation on the ground that the religious beliefs inducing the contribution were false; once we assume that the underlying dispute is properly characterized as religious, the suit for a refund becomes a transparent vehicle for invoking governmental assistance to benefit one side in a religious conflict at the expense of the other, something the establishment clause plainly forbids." (Tribe, American Constitutional Law (1988) § 14-11, p. 1235.)

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testator to his prejudice and the prejudice of his heirs at law (Civ. Code, § 1573, subd. 1). . . . [¶] In this state of the case, *the beneficiaries* under the will *moved for judgment on the pleadings* against Smith *as to the fraud and undue influence counts* of his pleading, and against Hallinan as to his entire pleading. *On the same day, the beneficiaries also moved to strike the* Hallinan pleading and the *fraud and undue influence counts* of the Smith pleading. [¶] In due time the matter was heard and in ruling upon the matter, *the court* filed a memorandum opinion in which it *stated that the gist of the fraud and undue influence counts of the two pleadings was that the charitable beneficiaries named in the will had influenced the making of the will* by teaching the testator certain religious beliefs *which were in fact untrue* and which they had no reason to believe were true. . . ." (*Id.*, at pp. 412, 413, emphasis added.) Since the cited excerpts of the opinion clearly indicate that *Estate of Supple was* decided upon fraud and undue influence, it is not only relevant, but extremely persuasive.

Members of this court may detest the practice of heavenly deception. We may abhor the results of the Church's selective (and successful) proselytization. We may condemn such practices as destructive of the integrity of the family.[9] Yet, as judges we must resist the temptation to tread into this theological thicket. For it is neither for governments, nor their instrumentalities, the courts, to divine the truth of those teachings. That is the law to which we are all bound.[10] I am satisfied that both the Court of Appeal and the trial court before it have correctly found the law and applied it to these appellants. Therefore, I would affirm the trial court's grant of summary judgment on the fraud, emotional distress and restitution counts.

ANDERSON, CARL WEST, J.*

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[9] The Court of Appeal said it best: "The beguiling and very intensive recruiting methods of the Unification Church, which appear primarily directed at those young people who are most emotionally impressionable and vulnerable, seem objectionable to us, as doubtless they do to most disinterested observers."

[10] See Justice Mosk's eloquent concurring opinion affirming this principle when he voted to uphold the constitutionality of the death penalty, *People* v. *Anderson* (1968) 69 Cal.2d 613, 634: "As a judge I am bound to the law as I find it to be and not as I might fervently wish it to be."

* Presiding Justice, Court of Appeal, First Appellate District, Division Four, assigned by the Chairperson of the Judicial Council.

MOLKO and LEAL

v.

HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD CHRISTIANITY, *et al.*

S.F. 25038

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Trial Court & No.:	Superior Court of San Francisco County No. 769-529
Trial Judge:	Hon. Stuart R. Pollack

APPENDIX B

CALIFORNIA COURT OF APPEAL
FIRST DISTRICT
DIVISION TWO

Nos. A025338, A020935

DAVID MOLKO,
Plaintiff-Cross-Defendant and Appellant;

TRACY LEAL,
Plaintiff and Appellant,

v.

HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD CHRISTIANITY, *et al.*,
Defendants, Cross-Complainants and Appellants;

NEIL MAXWELL, *et al.*,
Cross-Defendants and Respondents.

[Mar. 31, 1986]

Kelly, Leal & Olimpia and Stanley F. Leal for Plaintiffs, Cross-defendant and Appellants.

Friedman, Sloan & Ross and Jeffrey S. Ross for Defendants, Cross-complainants and Appellants.

Shapiro & Shapiro, Carl B. Shapiro and Alysworth C. Green for Cross-defendants and Respondents.

OPINION

KLINE, P. J.—These cases present two general questions: (1) whether, consistent with the free exercise clause of the First Amendment, former members of a religious organization can maintain causes of action against that organization for fraud and deceit, intentional infliction of emotional distress and false imprisonment and can claim restitution for financial contributions made to the organization; and (2) whether the religious organization can maintain a cross-complaint against a former member and other persons for violation of its civil rights under federal and state statutes.

These appeals arise out of one action in the superior court and have been consolidated on this court's own motion for decision herein. In No. A025338 plaintiffs David Molko and Tracy Leal appeal from a summary judgment in favor of defendants Holy Spirit Association for the Unification of World Christianity and New Education Development Systems, Inc. (hereafter collectively referred to as "the Unification Church" or "the Church").[1] Also in No. A025338, the Unification Church cross-appeals from a judgment of dismissal entered after the sustaining of a demurrer without leave to amend as to its amended cross-complaint against Molko. In No. A020935, the Unification Church appeals from a judgment of dismissal entered after the sustaining of demurrers without leave to amend as to its amended cross-complaint against cross-defendants Neil Maxwell and Joseph Alexander, Sr.

We conclude that the court below properly granted summary judgment in favor of the Unification Church on the

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[1] While these two organizations are apparently separate entities, differentiation between them is unnecessary for purposes of these appeals.

complaint and affirm that judgment. We also conclude, however, that the trial court erroneously sustained the demurrers to the Church's cross-complaint against Molko, Maxwell and Alexander without leave to amend. Consequently, we reverse the judgments of dismissal entered in favor of those parties.

I. Introduction

Molko and Leal are former members of the Unification Church, a religious organization which follows the teachings of the Reverend Sun Myung Moon.[2] While members of the Church, they were on separate occasions forcibly abducted from public streets by third parties and persuaded to relinquish their belief in and association with the Church. Thereafter, on July 25, 1980, they filed the instant complaint, alleging that they had been fraudulently induced to join the Unification Church through a variety of deceptive tactics on the part of some of its members. Plaintiffs each asserted causes of action for fraud and deceit, intentional infliction of emotional distress and false imprisonment. Molko also alleged a cause of action for restitution of a $6,000 gift assertedly obtained by the Church through the exertion of undue influence.[3]

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[2] The Unification Church "is one of more than 120 national Unification Churches throughout the world propagating a common religious message under the spiritual guidance of the Reverend Sun Myung Moon, the Unification movement's founder and prophet. The Church was organized as a California nonprofit corporation in 1961, and since 1975 has maintained its headquarters in New York City." (*Holy Spirit* v. *Tax Comm.* (1982) 55 N.Y.2d 512, 519 [450 N.Y.Supp.2d 292, 435 N.E.2d 662].) The Church's description of its history, doctrine, dogmas and teachings is set forth in the opinion just cited at pp. 524-525.)

[3] The complaint set forth additional causes of action which were abandoned prior to the entry of judgment and have no relevance on appeal.

On April 7, 1982, the Church filed a first amended cross-complaint against Molko, Maxwell and Alexander, as well as against other cross-defendants not involved in these appeals. The cross-complaint was based essentially upon what the Church refers to as "deprogramming" activities, the conspiring to kidnap and actual kidnap of members of the Church by nonbelievers for purposes of forcing those members to abandon their religious beliefs and to terminate their association with the Church. Claims for violation of the civil rights of the Church and its members were asserted against all three of these cross-defendants under federal and state civil rights statutes. (42 U.S.C. § 1985(3); Civ. Code, §§ 51.7 and 52.) Additionally, a claim for full or partial indemnity was asserted against Maxwell, alleging that any damages for which the Church were liable to Molko had been caused, in whole or in part, by Maxwell, who had kidnapped and "deprogrammed" Molko.

II. The Appeal of Molko and Leal from the Grant of Summary Judgment to the Church.

On May 26, 1983, the Church filed a motion for summary judgment or, in the alternative, for summary adjudication of issues as to plaintiff Leal, and filed a separate similar motion as to plaintiff Molko. Insofar as relevant to the present appeal, the Church urged in support of its motions that plaintiffs had not relied upon any misrepresentations of Church members which proximately resulted in any damage of which plaintiffs complained; that any misrepresentations or failure to disclose Church members' religious affiliation, or other conduct of which plaintiffs complained, was protected by the First Amendment and could not form the basis of a claim for fraud or intentional infliction of emotional distress; that the conduct alleged in support of the claim for emotional distress was not outrageous; that plaintiffs had not been subject to any involuntary confinement which would sup-

port a claim for false imprisonment; and that plaintiffs consented to participate in all conduct which they claim caused them distress or damage. Additionally, as to plaintiff Malko, the Church urged that his claims for fraud and intentional infliction of emotional distress were barred by the statute of limitations; and that the Church was entitled to judgment on his claim for restitution of a gift because the evidence demonstrated that he made the $6,000 contribution because of his then existing religious beliefs.

Although Molko and Leal purport to argue in their briefs that the trial court erred in granting summary judgment because there are triable issues of fact as to each cause of action, the record and briefs herein demonstrate that, with a minor exception which we deem immaterial (see *infra*, p. 6, fn. 5), the facts regarding the occurrences giving rise to this law suit are essentially undisputed for purposes of the motion for summary judgment.[4] It is, rather, the legal consequences flowing from those facts which are in dispute. We will summarize the facts with respect to each plaintiff separately.

Facts as to Plaintiff David Molko

David Molko arrived in San Francisco in December 1978. A 27-year-old graduate of Temple University School of Law, he had recently taken and passed the July 1978 examination for admission to the Pennsylvania bar. He had come to San Francisco thinking that he

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[4] In its brief, the Church noted this lack of dispute as follows: "The facts set forth are appellants' version of the events which must necessarily be accepted for purposes of summary judgment. Had the matter gone to trial, respondents would have vigorously contested many of these suppositions[;] however, as the [trial] court concluded, even on the appellants' version of the facts, no viable causes of action could be stated." The facts before the trial court at the time of the hearing on the motion for summary judgment were supported by declarations and references to extensive discovery responses.

might try to find a job or take the California bar examination. He was quite uncertain about his future at that time.

In January 1979, Molko was approached by Mark Bush and Ernest Patton at a bus stop in San Francisco. They told him they were involved with a group called the Creative Community Project which was interested in certain environmental issues. When Molko inquired about the associational ties of the group, he was told it was composed of an "international community of professionals who lived together and often discussed world events and topics of interest to the community. Molko asked whether the group had any religious affiliation and was told that it did not. Bush and Patton invited Molko to dinner that evening at the group's house on Bush Street in San Francisco.

Molko attended the dinner, where there appeared to be a number of guests such as himself. Molko was not allowed to have any conversation with the other guests and was spoken to constantly by members of the group during dinner and after a lecture that followed. After viewing a slide show of a farm in Booneville apparently operated by the group, he was invited to spend a weekend there and was told a bus was leaving that evening. Molko was interested and agreed to go. Prior to boarding the bus to Booneville, Molko signed a form, setting forth his name, address and telephone number.[5] At Booneville Molko learned that the group derived its teachings from the Reverend Sun Myung Moon and many other different philosophers. There was at that time no mention of the Unification Church or "Moonies." Molko was at all times free to leave Booneville and knew that buses returning to

[5] The Church claims that this form identified the program at Booneville as being associated with the Unification Church, while Molko claims that it did not. Due to the conclusions which we reach in this opinion, this factual dispute is immaterial to the Church's entitlement to summary judgment.

San Francisco left daily. He saw no evidence that anyone else was being restrained at Booneville against his or her will.

During the week of January 29, 1979, Molko visited another group site known as "Camp K." It was during this visit that Molko first learned that his new associates were all followers of the Unification Church and Reverend Moon. He nevertheless remained with the organization. Molko spent approximately five to seven weeks at Camp K. He was not pysically restrained there and knew he was free to leave.

Thereafter Molko returned to San Francisco and participated in Church activities such as fundraising and "witnessing" (recruiting new persons to join the Church). On April 6, 1979, Molko made a donation of $6,000 to the Church. At Church expense, Molko attended a bar review course at Hastings Law School. He took the California bar examination in July 1979. On July 26, 1979, upon leaving the last session of the bar examination, Molko was forcibly abducted by two persons and persuaded to relinquish his belief in the Church. His association with the Unification Church terminated at that time.

Facts as to Plaintiff Tracy Leal

On or about June 7, 1979, Tracy Leal, then 19 years of age, was traveling by bus from her home in Santa Clara County to visit Humboldt State University, where she was considering enrolling as a student. This trip required a bus transfer in San Francisco. While at the San Francisco bus depot, Leal was approached by a Unification Church member named Collette Zielinski, who said she was waiting for a friend arriving from Switzerland. Leal remarked that she loved to ski and had always wanted to go to Switzerland. Zielinski said her friend was a skier and suggested Leal might want to meet her.

Leal and Zielinski were then joined by another Unification Church member, Bradford Parker. Zielinski and

Parker told Leal about the house in San Francisco where they lived with a group of people calling themselves the Creative Community Project who engaged in various good works, such as providing food to the poor. Leal asked Zielinski and Parker if this group were "some religious thing" and told them that if it were she did not want to get involved. Parker responded that members of the group "all come from different religious backgrounds."

Leal accepted an invitation to dinner that evening at the Bush Street house. After the meal she listened to a lecture and viewed a slide show of a farm in Booneville. The Creative Community Project was the only organization identified that evening. Neither the Unification Church nor Reverend Sun Myung Moon were mentioned.

At the end of the evening Leal accepted an invitation to attend a weekend "seminar" at the Booneville farm. Like Molko, she signed a form prior to the trip to Booneville which she asserts contained no mention of the Unification Church. Although the seminar was to be held over the entire weekend, Leal was told she could return to San Francisco at any time.

On her second day at Boonesville, Leal asked a co-director named Joshua whether the group was the "Moonies." He responded "No, but we are a form of Christian group, but we don't really want to drive anyone away. So we are trying not to scare people away who might not be Christians. So we are just kind of keeping quiet about it for a while."

On or about June 11, 1979, Leal visited another Northern California encampment of the group, known as "Camp K," with several people from Booneville. On or about June 24, while at Camp K, Leal again inquired whether members of the group were "Moonies" and was told that they were not. Later that evening, Parker Zielinski and another woman told Leal that the group did follow some of the teachings of Reverend Moon.

On June 29, 1979, Leal was finally informed of the true nature of the organization. She was told that group members belonged to the Unification Church and followed the teachings of Reverend Moon. Leal did not seek to leave the group upon learnings these facts.

On approximately September 1, 1979, Leal flew with other Church members to Boulder, Colorado, where she spent the next month attending lectures, hiking and praying. From there she went to Los Angeles where she engaged in fundraising by soliciting contributions door-to-door. She usually engaged in this activity alone, voluntarily returning at the end of each day to the Church facility where she was living. On or about October 29, 1979, Leal was abducted from a street in Los Angeles by persons hired by her family and was persuaded to abandon her faith in the Church. Leal's association with the Unification Church terminated at that time.

A. Fraud and Deceit

With respect to their claims for fraud and deceit, Molko and Leal each alleged, in essence that specified members of the Unification Church, knowing the falsity of their representations, told them that meetings to which they were invited were with a group of community-minded persons who maintained a farm near Booneville for recreational purposes. The true facts were that the initial meetings each plaintiff participated in were with members of the Unification Church and were for the purpose of isolating and indoctrinating newly recruited persons. Plaintiffs did not learn that defendants were attempting to induce them to join the Unification Church until the indoctrination program had effectively commenced. As a result of defendants' fraud and deceit, plaintiffs were induced to join the Church and work long hours to further its purposes without material recompense. Had plaintiffs known the actual facts, neither would have accepted invitations to the initial meetings,

attended the farm in Booneville, or joined the Unification Church.

A motion for summary judgment "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).) Due to the "drastic nature of the procedure and the importance of safeguarding the adverse party's right to a trial, the moving party must make a strong showing." (6 Witkin, Cal. Procedure (3d ed. 1985) (Proceedings Without Trial, § 285, p. 585.) "In determining whether the papers show that there is no triable issue as to any material fact the court shall consider all of the evidence set forth in the papers . . . and all inferences reasonably deductible from such evidence, except summary judgment shall not be granted by the court based on inferences reasonably deductible from such evidence, if contradicted by other inferences or evidence, which raise a triable issue as to any material fact." (Code Civ. Proc., § 437c, subd. (c).[6]) We examine the trial court's grant of summary judgment on plaintiffs' causes of action for fraud, and all other causes of action, bearing this standard in mind.[7]

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[6] The word "deducible" was substituted for the word "deductible," which appeared in the statute at the time defendants' motion for summary judgment was made, by a 1983 amendment to Code of Civil Procedure section 437c, subdivision (c). That amendment is obviously without substantive significance.

[7] The Church argues that, pursuant to *Reader's Digest Assn.* v. *Superior Court* (1984) 37 Cal.3d 244 [208 Cal.Rptr. 137, 690 P.2d 610], summary judgment should be deemed a "favored remedy" and viewed under a standard more favorable to the Church in this case because it involves the exercise of First Amendments rights. That such support can be found in *Reader's Digest* is questionable since the California Supreme Court was there concerned only with "defamation cases involving the issue of 'actual malice' under the *New York Times* standard", which requires proof by clear and

"The elements of fraud, which give rise to the tort action for deceit, are (1) misrepresentation (false representation, concealment or non-disclosure); (2) knowledge of falsity (or 'scienter'); (3) intent to defraud, i.e., to induce reliance; (4) justifiable reliance; and (5) resulting damage." (4 Witkin, Summary of Cal. Law (8th ed. 1974) Torts, § 446, p. 2711, and authorities there cited.) With respect to the element of justifiable reliance, it must be shown that the misrepresentation or nondisclosure was " 'an immediate cause of [the plaintiff's] conduct which alters his legal relations,' " and that without such representation " 'he would not, in all reasonable probability, have entered into the contract or other transaction.' " (*Id.*, at § 472, p. 2732, quoting *Spinks v. Clark* (1905) 147 Cal. 439, 444 [82 P. 45].)

Molko and Leal insist that, with respect to their claims of fraud and deceit, "the central issues of fact" that remain to be reviewed are the truth or falsity of the representations made to them by members of the Unification Church and the intent of those who made the representations. We cannot agree. Though it ultimately ruled against them, the trial court resolved these questions in favor of plaintiffs either explicitly or by necessary implication. Thus, the trial court agreed that members of the Church "did not originally disclose that they were affiliated with the Unification Church or Reverend Moon, and there is evidence that they affirmatively misrepresented that fact, particularly to Ms. Leal." The record also clearly demonstrates that, as Molko and Leal contend, the misrepresentations were made to induce plaintiffs to associate with their recruiters, who feared

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convincing evidence rather that a preponderance of evidence. (*Id.*, at p. 252.) In any event, we need not reach this issue here since we determine that pursuant to the traditional standard the trial court properly granted summary judgment with respect to all causes of action.

plaintiffs would reject their overtures if their affiliation with the Unification Church or Reverend Moon were first made known.

The only genuine issue with respect to the claims of fraud and deceit is whether there is a triable issue of fact as to whether Molko and Leal justifiably relied upon the false representations initially made to them. We agree with the trial court that this question does not present a triable issue of fact.

Preliminarily, the evidence is uncontroverted that within two or three weeks of their first contact with the group initially identified as the Creative Community Project, and before formally joining the Unification Church and engaging in its work, both Molko and Leal were informed of its affiliation with Reverend Moon. Neither sought to leave the Church and both remained active in Church affairs long after becoming familiar with Reverend Moon's teachings.

Plaintiffs endeavor to avoid the seemingly fatal consequences of these undisputed facts by alleging that during the brief period before the truth was revealed to them agents of the Church had gained control of their minds, thereby rendering them incapable of resisting the inducements to join the Church and work diligently to further its purposes. Plaintiffs contend, in other words, that they justifiably relied on representations they knew to be untrue because those who made the false representations first stripped them of independent judgment. This theory, which is central not only to plaintiffs' cause of action for fraud and deceit but, as we shall see, to the remaining causes of action as well, rests entirely on the declarations of Dr. Margaret Singer, a psychologist, and Dr. Samuel Benson, a psychiatrist.

Dr. Singer states in her declaration that she had interviewed approximately 260 persons who were or had been connected with the Unification Church of Sun Myung

Moon, which she identified as a "cult." [8] She found a striking resemblance between the methods of recruitment and control used by "the cults" and those used on some Americans imprisoned during the Korean War whom she had also interviewed. According to Dr. Singer, recruiters for the Unification Church engage in "systematic manipulation of the social influences" surrounding the potential recruit to the extent that the recruit loses the capacity to exercise his or her own free will and judgment.

Dr. Singer examined both Molko and Leal in connection with their recruitment and indoctrination into the Unification Church, and their experiences with "that cult." She found that the deceptive practices for both recruitment and "psychological confinement" of Molko and Leal were typical of those systematically utilized by the Unification Church. As a result of the "tremendously sophisticated" indoctrination techniques employed by Unification Church members, Molko and Leal were both assertedly rendered incapable of exercising their own will and judgment and were unable to respond to the fact that they had been deceptively recruited by "Moonies," with whom they would not otherwise have freely associated. Dr. Singer further found that Molko and Leal each suffered emotional distress as a result of being manipulated and as a result of the fact that they complied with the requirements placed upon them to deceive others in either fund-raising or recruitment activities on behalf of the Unification Church. Dr. Singer did not specify what factual information obtained from Molko and Leal led her to reach these conclusions.

Dr. Benson. in his declaration, stated that he had treated a significant number of patients suffering from psychological disorders secondary to their connection with

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[8] The "distinguishing criteria" of "cults" set forth by Dr. Singer are described *infra* at footnote 12.

"various cults," such as the Unification Church. He stated that he had found the recruitment and indoctrination methods of the Unification Church—which he, like Dr. Singer, described without elaboration as "the systematic manipulation of social influence[s]"—frequently result in the recruit being "persuasively coerced" into actions and activities in which he would not engage in the free exercise of his own will and intellect. Dr. Benson further stated that studies of methods employed by Chinese communists under Mao tse-tung reveal indoctrination techniques substantially similar to those used by the Unification Church and other cults.

Dr. Benson, who also interviewed Molko and Leal, found both to be so effectively coerced by the systematic manipulation employed as to be under control of their recruiters. He concluded that they were rendered incapable of exercising their own will and judgment by the time they learned that their recruiters were acting on behalf of the Unification Church. Dr. Benson also concluded that Molko and Leal had both lost the judgment capacity to leave the Church and suffered emotional distress as a result of the methods employed by their recruiters. Like Dr. Singer, Dr. Benson did not indicate what, if any, specific factual information obtained from Molko and Leal supported his conclusions.

The trial court refused to permit the foregoing expert testimony to be used to establish any triable issue of fact.

Among other things, the court found that the testimony of Dr. Singer and Dr. Benson conflicted with that of plaintiffs themselves with respect to the significance of the Church's initial deception. Thus, in a lengthy order granting summary judgment, the court specifically found that the misrepresentations of the Church and its failure to at first disclose its affiliation with Reverend Moon "cannot be deemed material or to have induced either Plaintiff reasonably to have relied upon them.

Plaintiffs' own testimony eliminates any triable issue of fact in this regard." Referring to the testimony of plaintiffs at deposition, the trial court observed that, "[b]y their own admissions, Plaintiffs agreed to join the group because their association satisfied personal concerns and anxieties both were experiencing." The admissions that they joined the group for reasons which were not dependent upon its formal affiliations were buttressed, the court found, by the fact that "when [plaintiffs] learned the group was part of the Unification Church, they did not leave or attempt to leave, although they knew they might have done so. Their actions reflect that it was not their unawareness of defendant's affiliation that caused them to stay."

The trial court refused to permit plaintiffs to rely on the opinions of Dr. Singer and Dr. Benson not only for the foregoing evidentiary reasons,[9] but as well on constitutional grounds. In this latter regard the trial court relied upon *Katz* v. *Superior Court* (1977) 73 Cal.App. 3d 952 [141 Cal.Rptr. 234].

In *Katz*, the Court of Appeal was confronted with the testimony of a psychiatrist and a psychologist, very similar to that presented here, seeking to establish that the Unification Church engaged in "coercive persuasion" or "brainwashing" to gain the allegiance of recruits to the Church. In that case, parents of five young adult members of the Church had obtained orders from the superior court appointing them temporary conservators of the

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[9] In addition to finding that the opinions of the two experts conflicted with plaintiffs' own testimony, the trial court also noted that: "Both doctors examined the Plaintiffs long after the events in question. They did not reach their opinions concerning Plaintiffs' state of mind based upon a contemporaneous examination independent of their views of Unification Church methods, but seem to have reasoned backwards from their disapproval of those methods to the conclusion that Plaintiffs were not thinking freely because they were persuaded by them."

persons of their children. The parents contended their children had been subjected to "coercive persuasion" through methods such as "[f]ood deprivation: sleep deprivation; isolation; the use of fear tactics; the use of guilt feelings; and indoctrination." (*Id.* at p. 972.) The *Katz* court was unwilling to inquire into the merits of these assertions, reasoning that "[w]hen the court is asked to determine whether that change was induced by faith or by coercive persuasion is it not in turn investigating and questioning the validity of that faith? At the same time the trier of fact is asked to adjudge the good faith and bona fideness of the beliefs of the conservatees[']] preceptors. If it be assumed that certain leaders were using psychological methods to proselytyze [*sic*] and hold the allegiance of recruits to the church or cult, call it what we will, can it be said their actions were not dictated by faith merely because others who engaged in such practices have recanted?'" (*Id.*, at pp. 987-988, fn. omitted.)[10]

In overturning the orders appointing conservators, the *Katz* court concluded that in the absence of actions rendering the adult believers "gravely disabled," as defined by statute,[11] the processes of the state could not be used to interfere with the acts of the Church and its members without impinging upon the First Amendment right to free exercise of religion. (*Id.*, at pp. 988-989.)

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[10] We do not understand this statement to mean that a court cannot under any circumstances pass on the question of whether members of a religious organization honestly and in good faith believed assertedly fraudulent representations. Such a judicial inquiry can be undertaken to the extent that the truth of religious doctrines or beliefs is withheld from the trier of fact. (*United States* v. *Ballard* (1944) 322 U.S. 78 [88 L.Ed. 1148, 64 S.Ct. 882].)

[11] See Welfare and Institutions Code section 5008, subdivision (h), defining "gravely disabled" as, inter alia, a condition in which a person is unable, as a result of a mental disorder, to provide for his basic personal needs for food, clothing and shelter.

Molko and Leal seek to distinguish *Katz* on several grounds. They emphasize, first, that in *Katz* the individual right to religious freedom was asserted by then members of the Unification Church, not by the Church itself, and that *Katz* therefore does not speak to the ability of the Church to utilize the free exercise clause to prevent former members from subjecting its acts to judicial scrutiny. It is additionally contended that the holdings of *Katz* should be limited to the context of conservatorship proceedings because the "gravely disabled criteria" set forth in the Welfare and Institutions Code were central to the decision in that case. We are unimpressed by these efforts to constrain the meaning of *Katz*. Although, to be sure, it was the "recruits" who in that case sought to protect the right to religious freedom while here it is the "preceptors" who advance that right, the applicable principles are the same. Those fundamental principles are by no means limited to the unique facts of *Katz* or to conservatorship proceedings.

The trial court correctly discerned that the analysis in *Katz* is pertinent to the determination whether, consistent with the free exercise clause of the First Amendment, the indoctrination methods of the Unification Church (described in *Katz* as "coercive persuasion" and here as "the systematic manipulation of social influences") may be the subject of judicial scrutiny; that is, whether the methods assertedly employed by the Church to induce submission to its precepts are within the domain of religious belief, and therefore immune from scrutiny, or instead represent a form of action that may be restricted by the courts. As we have noted, the court in *Katz* held that evidence that healthy adults were induced to join the Church and to change their life style as a result of "brainwashing" rather than by religious faith could not be considered because the evaluation of such evidence necessarily requires the exercise of judgment as to the validity of that faith. (*Id.*, at pp. 987-988.)

The evidence proffered in the instant case presents precisely the same problem. Pejoratively characterizing the Unification Church as a "cult," [12] and suggesting that its purposes are not authentically religious,[13] plaintiffs' experts essentially seek to establish that the "tremendously sophisticated" indoctrination techniques employed to induce Molko and Leal to join the Unification Church de-

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[12] According to Dr. Singer, the "distinguishing criteria" of "cults" are the following: "Cult leaders are self-appointed messianic persons who claim to have special missions in life, which they claim have been given to them because they are unique. The veneration of the group form is directed toward the leader rather than toward God or abstract principles such as might be done in other kinds of organizations. Usually the cults have a double set of ethics in that a cult member is open and honest within the cult but learns that it is all right to deceive non-members. . . . [¶] The cults tend to be authoritarian in their power structure, in contrast to the wider society of democracy in which we live. Cults also tend to be totalistic in the sense that they prescribe down to the tiniest detail how one should communicate with other members in the groups, non-members, the precise activities in which they should engage, etc."

It deserves to be noted that there is disagreement about the proper definition of the religious "cult" among many who have studied the phenomenon from a scientific perspective. (Compare, e.g., Stark & Bainbridge, *Of Churches, Sects and Cults: Preliminary Concepts for a Theory of Religious Movements*, 18 Jour. for the Sci. Study of Religion 117 (1979) and Martin, A Definition of Cult: Terms and Approaches, in Fichter (ed.) Alternatives to American Mainline Churches (1983) pp. 27-42.) Moreover, "not all religious scholars or psychologists agree with popular writers that cults always have had unwholesome effects on their members." (Pavlos, The Cult Experience (1982) p. 4; see also Shupe & Bromley, The New Vigilantes: Deprogrammers, Anti-Cultists, and the New Religions (1980).) In any event, as a noted sociologist has pointed out, the "cult" remains a "vague and unsatisfactory concept." (Eister, Culture Crises and New Religious Movements: A Paradigmatic Statement of a Theory of Cults, in Zaretsky & Leone (eds.) Religious Movements in Contemporary America (1974) p. 613.)

[13] Dr. Singer declares that "usually" the "only two real purposes" of cults are "fundraising and recruiting other members."

stroyed their capacity to exercise free will and judgment. However, the scientific perspective of plaintiffs' experts ignores the religious aspect of the Church's teachings and the spiritual nature of its hold on its members. To this extent, the evidence supplied by these experts disregards the testimony of plaintiffs themselves and is incompatible with plaintiffs' position in this lawsuit. Molko and Leal not only concede "the bona fides of the Unification Church's religious beliefs," [14] but acknowledge that, like other members of the Church, they sincerely adopted those beliefs. Additionally, plaintiffs effectively concede the religious character of the alleged misrepresentations. Thus, for example, Leal testified during discovery that she "believed that Moon was the Messiah and in some manner it was important to unite with him; and if the only way to do that was to join the Church, fine, do it, and it's worth any deceit that had to be spoken or done." Plaintiffs' experts may not be permitted to isolate certain representations of the Church and treat them as nonreligious; for in determining whether allegedly fraudulent statements made by representatives of religious bodies are entitled to the protection of the First Amendment the statements must be viewed in the light of the doctrines of that religion. (*Christofferson* v. *Church of Scientology, Etc.* (1982) 57 Ore.App. 203, 239 [644 P.2d

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[14] It may be noted in this connection that federal and state courts in addition to the one in *Katz* have recognized that the primary purpose of the Unification Church is religious and that its beliefs are protected under the free exercise clause of the First Amendment. As stated by one federal court, "the Unification Church, by any historical analogy, philosophical analysis, or judicial precedent . . . must be regarded as a *bona fide* religion." (*Unification Church* v. *I. N. S.* (D.D.C. 1982) 547 F.Supp. 623, 628, fn. omitted; accord, *Holy Spirit* v. *Tax Comm., supra*, 55 N.Y.2d 512, 518-519; see also, *Larson* v. *Valente* (1982) 456 U.S. 228 [72 L.Ed.2d 33, 102 S.Ct. 1673]; *Ward* v. *Connor* (4th Cir. 1981) 657 F.2d 45, cert. den. (1982) 455 U.S. 907 [71 L.Ed.2d 445, 102 S.Ct. 1253]; *Troyer* v. *Town of Babylon* (E.D.N.Y. 1980) 483 F.Supp. 1135, 1137, affd. 628 F.2d 1346, affd. 449 U.S. 988 [66 L.Ed.2d 285, 101 S.Ct. 522].)

577, 600, 40 A.L.R.4th 1017], cert. den. (1983) 459 U.S. 1206 [75 L.Ed.2d 439, 103 S.Ct. 1196] and 459 U.S. 1227 [75 L.Ed.2d 468, 103 S.Ct. 1234].)

It would be entirely possible for a trial court to accept the view of Dr. Singer and Dr. Benson that Molko and Leal did not willingly submit to the religious teachings of the Unification Church because the psychological techniques of the Church deprived them of the ability to reason critically and make independent judgments, and to conclude, accordingly, that there is a triable issue of fact in this regard; *but it would not be possible for a trial court to reach this result without questioning the authenticity and the force of the Unification Church's religious teachings and permitting a jury to do likewise, which is constitutionally forbidden.* (*United States* v. *Ballard, supra*, 322 U.S. 78, 87 [88 L.Ed. 1148, 1154]; *Founding Church of Scientology* v. *United States* (D.C. Cir. 1969) 409 F.2d 1146, 1159 [13 A.L.R.Fed. 721], cert. den., 396 U.S. 963 [24 L.Ed.2d 427, 90 S.Ct. 434]; *Van Schaick* v. *Church of Scientology of Cal., Inc.* (D. Mass. 1982) 535 F.Supp. 1125, 1142-1145.) The idea that religious doctrine can be (or, as some would have it, invariably is) manipulatively employed to subvert reason —which, it may be noted, is an idea that has been used to condemn *all* religions as deceptively exploitive of certain universal human needs (see, e.g., Freud, The Future of an Illusion (1927))—is one we may entertain as individuals but which the First Amendment forbids us to consider as judges. Embodied in this constitutional prohibition is not simply a recognition of the value of the religious sensibility in its inevitably diverse and often conflicting forms, but as well an acknowledgement of the powerlessness of reason, and therefore the powerlessness of the law, to compass the mystery of religious faith. As Justice Douglas has stated, freedom of religious belief "embraces the right to maintain theories . . . which are rank heresy to followers of the orthodox faiths.

Heresy trials are foreign to our Constitution. Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others. Yet the fact that they may be beyond the ken of mortals does not mean that they can be made suspect before the law." (*United States* v. *Ballard, supra*, 322 U.S. 78, 86-87 [88 L.Ed. 1148, 1153-1154].) Thus, from the point of view of the law, the opinions of plaintiffs' experts are neither true nor false. As the trial court observed, these opinions are simply "veiled value judgments concerning the entire outlook of the Unification Church." [15] The court's conclusions that such opinions could not be employed to create a triable issue of fact and that such a triable issue did not otherwise appear, were correct.

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[15] In this regard, the trial court pointed out that "[t]he danger of relying upon value judgments disguised as expert psychiatric opinion has been recognized in various contexts. See, e.g., *Smith* v. *Schlesinger* (D.C.Cir. 1975) 513 F.2d 462, 474-475, and authorities cited at p. 475, fn. 45; Wexler, *Forward: Mental Health Law and the Movement Toward Voluntary Treatment* (1974) 62 *Cal.L. Rev.* 671, 673; Ennis & Litwack, *Psychiatry and the Presumption of Expertise: Flipping Coins in the Courtroom* (1974) 62 *Cal.L. Rev.* 693, 726-729. While the limitations of expert testimony as a means of evaluating an individual's state of mind more typically have been considered in upholding the fact finder's right to reject the expert's opinion, e.g., *Mills* v. *Kopf* (1963) 216 Cal.App.2d 780, 785-786, expert testimony may be excluded altogether if based on matters which may not reasonably be relied upon. Evidence Code section 801(b), and Law Revision Commission Comment thereto. See, e.g., *People* v. *Luis* (1910) 158 Cal. 185, 195; *Roscoe Moss Co.* v. *Jenkins* (1942) 55 Cal.App.2d 369; *Long* v. *Cal-Western States Life Ins. Co.* (1955) 43 Cal.2d 871; 1 Ziskin, *Coping with Psychiatric and Psychological Testimony* vii (3d ed. 1981). It has also been suggested that opinions in this area are not sufficiently beyond common experience to warrant expert testimony. Evidence Code section 801(a). See Morse, [*Crazy Behavior, Morals and Science: An Analysis of Mental Health Law* (1978)] 51 So.Cal.L. Rev. [527] at pp. 558-560."

We do not, of course, mean to suggest that because it is a bona fide religious organization the conduct of the Unification Church is, as are its beliefs, entirely immune from government restriction. As emphasized by the United States Supreme Court in *Cantwell* v. *Connecticut* (1940) 310 U.S. 296 [84 L.Ed. 1213, 60 S.Ct. 900, 128 A.L.R. 1352], and reiterated in *Katz*, "Nothing we have said is intended even remotely to imply that, under the cloak of religion, persons may, with impunity, commit frauds upon the public. Certainly penal laws are available to punish such conduct. Even the exercise of religion may be at some slight inconvenience in order that the state may protect its citizens from injury. Without a doubt a State may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent. The State is likewise free to regulate the time and manner of solicitation generally, in the interest of public safety, peace, comfort or convenience." (*Cantwell* v. *Connecticut*, *supra*, 310 U.S. at pp. 306-307 [84 L.Ed. at p. 1219], fn. omitted; *Katz* v. *Superior Court*, *supra*, 73 Cal.App.3d 952, 987, fn. 13, and cases there cited.)

The beguiling and very intensive recruiting methods of the Unification Church, which appear primarily directed at those young people who are most emotionally impressionable and vulnerable, seem objectionable to us, as doubtless they do to most disinterested observers. Nonetheless, there is no evidence, and indeed it is not even claimed, that plaintiffs were induced to join and remain with the Church through the use or the threat of force or through other unlawful conduct or that plaintiffs were physically harmed during the recruitment process. Thus, we are not presented with such a substantial threat to public safety, peace or order that the state, through the judicial process, may intervene and impose liability

based upon mental health experts' opinions of the methods employed by members of a valid religious organization to impress their ideas upon mentally competent adults. (Compare *Meroni* v. *Holy Spirit Ass'n for Unification* (1984) 125 Misc.2d 1061 [480 N.Y.S.2d 706] [claim for emotional distress where it was alleged that Church members knew recruit was already emotionally disturbed could survive motion to dismiss].) If liability could be imposed in such circumstances, any disaffected adherent of a religion could bring suit alleging that he had been "brainwashed" by the religious organization, and courts would become entangled in determining which former adherents acted out of true faith and which were subject to "mind control." This is a result clearly at odds with the First Amendment. "'[T]he judicial eye cannot penetrate the veil of the church for the forbidden purpose of vindicating the alleged wrongs of excised members; when they became members they did so upon the conditions of continuing or not as they and their churches might determine, and they thereby submit to the ecclesiastical power and cannot now invoke the supervisory power of the civil tribunals." (*Watson* v. *Jones* (1872) 80 U.S. (13 Wall.) 679, 731 [20 L.Ed. 666, 677]; see also *Serbian Orthodox Diocese* v. *Milivojevich* (1976) 426 U.S. 696, 713 [49 L.Ed.2d 151, 165, 96 S.Ct. 2372]; *Kedroff* v. *St. Nicholas Cathedral* (1952) 344 U.S. 94 [97 L.Ed. 120, 73 S.Ct. 143].)[16]

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[16] Since we have determined that plaintiffs did not rely upon the initial failures to disclose the Church's affiliation in joining and remaining with the Church, and that the proferred evidence of "mind control" in the circumstances of this case cannot constitutionally be used to negate the evidence that plaintiffs acted voluntarily in so joining and remaining after having knowledge of the identity of the Church, we need not consider the Church's argument that the failure to disclose the identity or affiliation of their organization in recruiting new members can *never*, consistent with the First Amendment, constitute actionable misrepresentations.

B. *Intentional Infliction of Emotional Distress*

Molko and Leal contend that defendants' fraudulent representations and use of mind control techniques caused them severe emotional distress. In support of these contentions they rely primarily upon the declarations of Dr. Singer and Dr. Benson. For reasons just described, which we need not reiterate, these opinions cannot constitutionally be employed to impose liability upon the Church.

Additionally, Molko and Leal contend that they suffered emotional distress through threats of harm. In her answers to interrogatories Leal described as follows the threats of harm she experienced: "death, illness, pain and suffering, disease of all possible sorts were believed to befall anyone who left the movement and including family, regardless of their love of God in a Christian manner." Molko similarly described the threats of harm he experienced: "constant expression of how important it was not to leave the church because it was spiritually devastating, in that, people became ill, they experienced difficulty in dealing with people and/or their jobs. That people had died after leaving the church with a clear indication that there was a positive correlation between leaving the church and either becoming ill or dying in a rather peculiar way."

The elements of a prima facie case of intentional infliction of emotional distress are (1) outrageous conduct by the defendant, (2) intention to cause or reckless disregard of the probability of causing emotional distress, (3) severe emotional suffering and (4) actual and proximate causation of the emotional distress. (*Newby* v. *Alto Riviera Apartments* (1976) 60 Cal.App.3d 288 [131 Cal.Rptr. 547]; Rest.2d Torts, § 46.) "The conduct must be outrageous, i.e., beyond all bounds of decency; ordinary rude or insulting behavior is not enough to justify an award of damages." (4 Witkin, Summary of Cal. Law (8th ed. 1974) Torts, § 234, p. 2515.)

The trial court held that "[w]hatever value judgments one may place upon the Church's methods, Defendants' conduct was not extreme and outrageous in the sense required to support such a cause of action under California law. See, e.g., *Cortez* v. *Macias* (1980) 110 Cal.App.3d 640, 651-653; *Fuentes* v. *Perez* (1977) 66 Cal.App.3d 163; *Alcorn* v. *Anbro Engineering, Inc.* (1970) 2 Cal.3d 493, 497-499."

We find nothing in the record that compels us to disagree with this conclusion. As the evidence indicates and as the trial court found, plaintiffs joined the Unification Church and remained members out of the desire to satisfy certain personal needs each was then experiencing. There is no competent evidence either plaintiff was compelled to join the Church or prevented from leaving. To the contrary, plaintiffs were at all times free to maintain contact with non-members, as they did, and to end their involvement with the Church and repudiate its teachings, as eventually they also did. The technique used to recruit and indoctrinate plaintiffs, which are not materially different from those employed by other organizations (see, e.g., *Christofferson* v. *Church of Scientology, Etc., supra*, 57 Ore.App. 203, 211-227; 644 P.2d 577, 584-591), are neither so indecent nor so beyond the limits of social toleration that they provide the necessary element of outrageous conduct. (*Ibid.*)

Additionally, the threats of which plaintiffs complain are those of divine retribution. Such threats, certainly not unique to the Unification Church, are protected by the First Amendment and cannot form the basis for a claim of intentional infliction of emotional distress.[17]

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[17] In response to plaintiffs' suggestion that they were also prevented from leaving the Church by their fear of disappointing other Church members, the trial court correctly observed that threats of social ostracism are not impermissible and, indeed, are also constitutionally protected. (*NAACP* v. *Claiborne Hardware Co.* (1982) 458 U.S. 886 [73 L.Ed.2d 1215, 102 S.Ct. 3409].)

(See *Fowler* v. *Rhode Island* (1953) 345 U.S. 67, 70 [97 L.Ed. 828, 831, 73 S.Ct. 526] [court cannot regulate or control sermons]; see also *Van Schaick* v. *Church of Scientology of Cal., Inc., supra,* 535 F.Supp. 1125, 1139 [exhortations to sever family and marital ties and depend solely on church for emotional support will not support claim for infliction of emotional distress—"They are similar to the demands for single-minded loyalty and purpose that have characterized numerous religious . . . movements over the ages."].) If threats of this sort were actionable, litigation against religious entities by former believers would be unconstrained and rampant. Such a result, however, is precluded by the First Amendment.

C. *False Imprisonment*

Molko alleges he was falsely imprisoned by defendants at Camp K near Healdsburg, the farm in Booneville and various locations in San Francisco. Leal alleges she was falsely imprisoned at Camp K; the farm in Booneville; Boulder, Colorado; Los Angeles; and various locations in San Francisco. Both allege that such false imprisonment had been accomplished by threats of harm to them and their families, deprivation of sleep and psychological manipulation.

False imprisonment is defined as "the unlawful violation of the personal liberty of another." (Pen. Code, § 236; see *Parrott* v. *Bank of America* (1950) 97 Cal. App.2d 14, 22 [217 P.2d 89, 35 A.L.R.2d 263] [definition of crime and tort the same]. "The tort of false imprisonment is the nonconsensual, intentional confinement of a person, without lawful privilege, for an appreciable length of time, however short." (*City of Newport Beach* v. *Sasse* (1970) 9 Cal.App.3d 803, 810 [88 Cal.Rptr. 476] [citations omitted].) The confinement must be effected either by force or fear of force on the part of the victim. In the absence of force, the victim must feel "compelled to obey because he fears harm or injury,"

and his apprehension must not be unreasonable under the circumstances. (*People* v. *Martinez* (1984) 150 Cal.App. 3d 579, 599-600 [198 Cal.Rptr. 565].)

The trial court found that "neither Plaintiff was falsely imprisoned as conventionally understood," noting that both had acknowledged they were never physically seized or restrained physically. In fact, during the period of his alleged imprisonment, Molko commuted to a bar review course. Both plaintiffs acknowledge they were not physically restrained, but contend they were imprisoned by fraud and deceit and prevented from leaving because of the use of mind control techniques by defendants.

Plaintiffs rely upon *Parnell* v. *Superior Court* (1981) 119 Cal.App.3d 392 [173 Cal.Rptr. 906] for the proposition that consent of the victim is not a defense where the consent is induced by coercion or deception. On this basis they argue that their consent to remain on various premises owned or maintained by the Church is no defense to their claim because such consent was deceptively induced by mental coercion.

In *Parnell* the defendant was charged with the kidnapping and false imprisonment, lasting eight years, of a seven-year-old boy. This court held there both that there was sufficient circumstantial evidence that the detention was effected by threat of force and that consent of the victim is no defense where the consent is induced by coercion or deception. (*Parnell* v. *Superior Court*, *supra*, 119 Cal.App.3d 392, 409.) Putting aside the facts that *Parnell* involved a child of tender years and that the imposition of criminal liability sustained in that case did not threaten the exercise of First Amendment rights, our decision there did not eliminate force or threat of force as an element of false imprisonment. Thus if there is no confinement by force or threat of force, the issue of consent does not even arise.

Here, the only evidence of force or threats of force which plaintiffs seek to rely upon are the "mind control" testimony of Dr. Singer and Dr. Benson and threats of divine retribution. As we have explained, such evidence may not in the circumstances of this case be used to create a triable issue of fact. Consequently, the award of summary judgment on this cause of action, as on the causes of action for fraud and deceit and intentional infliction of emotional distress, was proper.

D. *Molko's Claim for Restitution*

Molko bases his claim for restitution of the $6,000 which he contributed to the Church upon his allegations of being fraudulently induced to join the Church and of domination and control by defendants by use of threats, deprivation of sleep, excessively long hours of work and other activities, and psychological manipulation.

The trial court reviewed Molko's deposition testimony regarding the circumstances of his making the contribution: "I was told that it was tax time and that the church was in desperate need of funds, and that it would be most—that the Heavenly Father would really appreciate, and really look favorably on seeing me give the money to the church." He had been fasting in Booneville before making the gift, but only for "a day or two." He was asked to travel to San Francisco, which he did by himself; then "Got to San Francisco and was presented with the fact—oh, we are desperately in need of money. Tax time is coming up. Can you help us? The Heavenly Father is asking you to help us."

One of the Church members in whom Molko had the greatest confidence told him she "thought I should do what I thought was best" and "was pretty much leaving it up to me."

While Molko contributed $6,000 to the Church, he was told that the Church would, as it did, pay for his tuition

for the bar review course. His explanation for giving and then receiving back a portion of the money was: 'That you gave God money and then God used your money rather than you using your money, and it worked better that way. In other words you gave your money to God and then God can distribute your money. And that way, the spiritual world can work for you." He also testified that at the time of making the gift he accepted that proposition.

Molko further testified that although he had some misgivings after agreeing to transfer the money, he did not ask to have it returned because: "I really believed that there was [*sic*] evil forces lurking around. And that if I disturbed the spiritual world enough, that something could happen. I believed that. And therefore, I felt a terrible sense of guilt and fear to ask for something that I had suposedly given to God." Molko revealed that he had other funds (amounting to "several thousand" dollars) which were available to him while he was a member of the Church, the existence of which he did not disclose to defendants. Referring to these funds, he stated: "I drew the line . . . . They [the funds] were quite under my control, but they stayed where they were." The trial court correctly determined that no triable issue of fact had been raised as to the question of undue influence.

Molko's own uncontroverted description of the circumstances under which he made the gift demonstrates that he did so out of a then held religious belief. The only evidence he has attempted to rely upon in support of a contrary view are misrepresentations made to him which he claims fraudulently induced him to join the Church and the "mind control" evidence of the two experts. As set forth earlier, the trial court justifiably determined that there was no reliance upon fraudulent misrepresentations and ruled correctly that, in the circumstances of this case, the testimony of Dr. Singer and

Dr. Benson may not constitutionally be used to create a triable issue of fact.

A former member of a religious organization who, like Molko, made a gift on the basis of religious beliefs he no longer holds cannot challenge the validity of the gift without challenging the validity of his former beliefs. Inquiry into the reasonableness of the beliefs which prompted him to make the contribution is, however, foreclosed by constitutional guarantees of freedom of religion. (*Estate of Supple* (1966) 247 Cal.App.2d 410, 414-415 [55 Cal.Rptr. 542], cert. den. (1967) 389 U.S. 820 [19 L.Ed.2d 70, 88 S.Ct. 37] [court cannot examine the validity or reasonableness of religious beliefs of testator], citing *United States* v. *Ballard*, *supra*, 322 U.S. 78 and *People* v. *Woody* (1964) 61 Cal.2d 716, 726 [40 Cal. Rptr. 69, 394 P.2d 813].)

"Once it is conceded that [F]irst [A]mendment values are unacceptably compromised when civil courts undertake to settle religious issues, it becomes clear that allowing a legal determination about property or some other secular matter to turn on a court's answer to a religious question represents a path fraught with peril: the path is one along which unsatisfied former believers could drag the civil courts into the theological thicket by the simple expedient of suing for a refund of their prior donations to a religious organization. . . . [¶] The existence of dissidents is a pervasive fact of religious life; their role within religious organizations can be the healthy one of spurring continuing introspection and reexamination of doctrine. But it is not hard to imagine what would occur if each potential dissenter were told: contributing to a religious organization—your own or indeed that of a group you reject—will give you a judicial platform from which to air your religious differences with others and potentially win a favorable verdict; all you need do in order to overcome the normal bar to civil adjudication of ecclesiastical matters is sue for a re-

fund! [¶] Not only would such an invitation declare open season on churches and their followers; it could at the same time make at least some religious groups resist the very attempt to solicit donations, while inducing others—those too desperate for resources to refrain from financial appeals—to rigidify their doctrines and freeze or at least conceal their own evolution for fear that doctrinal change, ordinarily immune from censorship, could trigger refund-seeking litigation. It is in part for reasons such as these that the [F]irst [A]mendment has been construed to mean that religious questions remain non-justiciable even when they do not reach civil courts independently but instead form preliminary or ancillary issues in an otherwise justiciable dispute." (Tribe, *American Constitutional Law* (1978) pp. 874-876.) To permit Molko's claim to go to trial on the evidence he has presented would have numerous adverse consequences for religion which the First Amendment was designed to avoid.

For the foregoing reasons, we conclude that the court below properly awarded summary judgment to the Unification Church on all plaintiffs' causes of action.[18]

III. The Appeals of the Unification Church From Judgments of Dismissal on Its Cross-complaint

A. *The Proceedings Below*

The Church's cross-complaint alleged a cause of action for indemnity against cross-defendant Neil Maxwell and alleged separate causes of action under 42 United States Code section 1985(3) and Civil Code sections 51.7 and 52 against all three of the cross-defendants involved in

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[18] Due to the conclusions we have reached here, we do not consider the Church's additional contentions, set forth in footnotes to its brief, that Molko's claims for intentional infliction of emotional distress and false imprisonment are barred by the statute of limitations.

these appeals, Maxwell, Joseph Alexander, Sr. and David Molko.[19]

Maxwell demurred to the indemnity cause of action on the basis that it failed to state a cause of action. All three cross-defendants demurred to the federal and state civil rights causes of action on the ground that the Church lacked standing to sue. Maxwell and Alexander additionally demurred to these two causes of action on the basis that they were barred by the statute of limitations.[20]

The trial court sustained the demurrers "on all grounds stated" without leave to amend. Thereafter the Church filed a motion for reconsideration, urging that any defects in the first amended cross-complaint could be cured by further amendment and requesting leave to file a proposed second amended cross-complaint, a copy of which was attached to its motion. The trial court denied the motion for reconsideration and judgments of dismissal were subsequently entered.

A general demurrer admits the truth of all material factual allegations in the complaint or, as here, cross-complaint; the question of the plaintiff's ability to prove the allegations, or the possible difficulty in making such proof, does not concern the reviewing court; and the plaintiff need only plead facts showing that he may be entitled to some relief. (*Alcorn* v. *Anbro Engineering, Inc.* (1970) 2 Cal.3d 493, 496 [86 Cal.Rptr. 88, 468 P.2d 216], citations omitted.) A demurrer should not be sustained if the pleading, liberally construed, states a cause of action on any theory. (5 Witkin, Cal. Procedure (3d

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[19] Various claims were asserted against other cross-defendants who are not parties to these appeals.

[20] Alexander also demurred to the federal and state civil rights causes of action on the ground that they were uncertain. He has not urged this argument on appeal in support of the judgment below and we do not consider it.

ed. 1985) Pleading, § 942, p. 377.) The general rule is that it is an abuse of discretion to sustain a demurrer without leave to amend unless the complaint shows that it is incapable of amendment. (*Berkeley Police Assn.* v. *City of Berkeley* (1977) 76 Cal.App.3d 931, 942 [143 Cal.Rptr. 255].) We review the sustaining of the demurrers in this action under these established principles; except that we do not review the sustaining of the demurrer with respect to the indemnity cause of action, which has been rendered moot by our earlier holding that the granting of summary judgment to the Unification Church was proper.

B. *Standing of the Church to Assert Claims Under 42 U.S.C. Section 1985(3)*

The Church alleged that, as a result of their class-based animus toward the Church and its members, the cross-defendants had conspired to deprive the Church and its members of the equal protection of the laws and of "equal privileges and immunities under the laws." [21] The

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[21] 42 United States Code section 1985(3) provides: "If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators."

allegations against Maxwell, Alexander and Molko were essentially the same, with the exception of the identity of their co-conspirators and the Church members who were allegedly kidnapped in furtherance of the conspiracy.[22] It was alleged that the cross-defendants' purpose was, inter alia, to prevent members of the Church from freely exercising their religious beliefs through interstate travel. The cross-complaint alleged that an injunction was required to prevent cross-defendants from continuing their efforts to kidnap and "deprogram" members of the Church. It also sought compensatory and punitive damages. The Church has abandoned the contention urged in the court below that it may assert a claim for violation of its own right and that of its members to free exercise of religion under 42 United States Code section 1985(3), but still contends it has representational standing to assert a violation of its members' constitutionally guaranteed right to travel.[23]

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[22] It was alleged that Maxwell participated in a conspiracy to kidnap David Molko. Alexander and Molko were alleged to have participated in a conspiracy to kidnap a Church member named Brenna Steinberg.

[23] In *Carpenters v. Scott* (1983) 463 U.S. 825, 830 [77 L.Ed.2d 1049, 1055, 103 S.Ct. 3352], the Supreme Court held that an alleged conspiracy to infringe First Amendment rights is not a violation of section 1985(3) unless it is proved that the state is involved in the conspiracy or that the aim of the conspiracy is to influence the activity of the state. The Court recognized, however, that, in accordance with its earlier decision in *Griffin* v. *Breckenridge* (1971) 403 U.S. 88 [29 L.Ed.2d 338, 91 S.Ct. 1790], section 1985(3) reaches purely private conspiracies aimed at depriving persons of the right to travel guaranteed by the federal Constitution. (*Carpenters* v. *Scott, supra,* 463 U.S., at pp. 832-833 [77 L.Ed.2d at pp. 1056-1057].) The Court also declined to pass on whether section 1985(3) reaches conspiracies other than those motivated by racial bias. (*Id.,* at p. 835 [77 L.Ed.2d at p. 1058].) The Fourth Circuit, however, noting that "the lower federal courts have, almost without exception, extended the coverage of the statute [section 1985(3)] to religious groups [citations]," has expressly held that a conspiracy against the Unification Church motivated by re-

Cross-defendants initially respond that the Church cannot have representational standing under section 1985(3) because only a "person" can sue under that statute. This argument is simply erroneous. The right of an organization to sue under the statute has repeatedly been recognized. (See, e.g., *N.A.A.C.P.* v. *Detroit Police Officers Ass'n., Etc.* (E.D.Mich. 1981) 525 F.Supp. 1215, 1218; *Vietnamese, Etc.* v. *Knights of K. K. K.* (S.D.Tex. 1981) 518 F.Supp. 993, 1000; see also *Chico Fem. Women's Hlth. Cr.* v. *Butte Glenn Med. S.* (E.D.Cal. 1983) 557 F.Supp. 1190, 1194, fn. 6.)

Cross-defendants next claim that the Church fails to meet the standing requirements for an association set forth by the Supreme Court in *Hunt* v. *Washington Apple Advertising Comm'n.* (1977) 432 U.S. 333, 343 [53 L.Ed.2d 383, 394, 97 S.Ct. 2434]: "[A]n association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit."[24] (See also *Warth* v. *Seldin* (1975) 422 U.S. 490, 511 [45 L.Ed.2d 343, 361, 364, 95 S.Ct. 2197].) In our view, the Church has met this standard.

Unquestionably, Church members would have standing to sue for the alleged violation of 42 United States Code section 1985(3) in their own right. Further, the Church's

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ligious discrimination falls within the ambit of section 1985(3). (*Ward* v. *Connor, supra*, 657 F.2d 45, 48; see generally Annot., Civil Liability for "Deprogramming" Member of Religious Sect (1982) 11 A.L.R.4th 228.)

[24] Since we determine that the Church has met this standard, we need not address the Church's contention that a more lenient state law standard (see *Stocks* v. *City of Irvine* (1981) 114 Cal.App.3d 520, 531-533 [170 Cal.Rptr. 724]) governs the issue of standing in this case.

interest in protecting its members' rights to freely travel in the exercise of their religious activities is germane to the Church's purpose as alleged in the cross-complaint: "The primary purpose of the church is the worship of God and engaging in related religious activities. The members of the Church constitute a recognizable group of persons who are bound together by an intellectual and spiritual nexus. Through their association, members of the Church seek to disseminate and enhance their religious beliefs through the free exchange of ideas, through interstate travel and through peaceful assembly." Thus the first two requirements of *Hunt* are met.

As to the third requirement, it does appear that the request for damages in the first amended cross-complaint would require the participation of individual members of the Church.[25] (See *Warth* v. *Seldin*, *supra*, 422 U.S. 490, 515-516 [45 L.Ed.2d 343, 364-365]; *R.I. Chapter, Assoc. Gen. Contractors* v. *Kreps* (D.R.I. 1978) 450 F.Supp. 338, 346, fn.3.) The Church, however, sought leave to file a second amended cross-complaint in which damage claims were deleted and injunctive relief only was sought.[26] As this amendment would have eliminated the need for participation of individual members in the action, the trial court abused its discretion in denying leave to file the proposed second amended cross-complaint.[27]

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[25] We deem frivolous Maxwell and Alexander's contention that individualized participation is required because they would defend on the ground that members of the Church are "brainwashed" and do not act of their own free will. If such a defense were available to them, they would develop it through discovery regardless whether individual members were parties to the action.

[26] In junctive relief is available under 42 United States Code section 1985. (*Action* v. *Gannon* (8th Cir. 1971) 450 F.2d 1227, 1237-1238; *Mizell* v. *North Broward Hospital District* (5th Cir. 1970) 427 F.2d 468, 473.)

[27] We also deem frivolous Maxwell and Alexander's suggestion that the Church may not be accorded representational standing be-

C. *Standing of the Church to Assert Claims Under Civil Code Sections 51.7 and 52*

As to the state civil rights claims, the only arguments cross-defendants advance in addition to the standing argument just discussed are that only a "person" can sue under the pertinent statutes, and that the requirement of Code of Civil Procedure section 367 that an action be prosecuted in the name of the real party in interest precludes the Church from bringing suit on behalf of its members. These arguments are without merit.

Civil Code section 14 expressly provides that the word "person" as used in that code "includes a corporation as well as a natural person." [28] Civil Code sections 51.7 and 52, by their language, protect the rights of "persons." Thus a corporation can maintain a cause of action under those sections.

Additionally, Code of Civil Procedure section 367 has never been held to bar an association or organization from bringing suit on behalf of its members. If cross-defendants' argument were correct, such a suit could never be maintained under California law. Such suits, however, are clearly permissible and cross-defendants' contention erroneous. (See *Gay Law Students Assn.* v. *Pacific Tel. & Tel. Co.* (1979) 24 Cal.3d 458, 465, fn. 3 [156 Cal.Rptr. 14, 595 P.2d 592]; *County of Alameda* v. *Carleson* (1971) 5 Cal.3d 730, 737, fn. 6 [97 Cal.Rptr. 385, 488 P.2d 953], appeal dismissed (1972) 406 U.S.

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cause its advocacy of its members' interests is not sincere or "bona fide." Certainly nothing in the cross-complaint or in the evidence before the trial court indicates that this is so, and this factual contention has no place in an argument supporting the sustaining of a demurrer.

[28] The Church alleged in its cross-complaint that it is a California nonprofit corporation. (See also, fn. 2, *ante*.)

913 [32 L.Ed.2d 112, 92 S.Ct. 1762]; *Residents of Beverly Glen, Inc.* v. *City of Los Angeles* (1973) 34 Cal. App.3d 117, 121-123 [109 Cal.Rptr. 724].)

D. *The Statute of Limitations*

Maxwell and Alexander maintain that the Church's claims under the federal and state civil rights statutes are barred by the statute of limitations because they are subject to the one-year limitation period of Code of Civil Procedure section 340, subdivision (2) (personal injury and various other torts), rather than the three-year limitation period of section 338, subdivision 1 (action on a liability created by statute). We need not reach this issue for, as we have noted, the Church has abandoned any claims for money damages under the civil rights statutes. It seeks to file a second amended cross-complaint seeking injunctive relief only as to what it alleges to be an ongoing conspiracy among the cross-defendants. If a conspiracy is actually proved to be continuing, the action is obviously timely. If no continuing conspiracy is proven, injunctive relief will, of course, be denied.

IV. Conclusion

As we have determined that summary judgment was properly granted to the Unification Church, the judgment entered in its favor on the complaint is affirmed. The Church's cause of action for indemnity against Maxwell (the fourth cause of action of the cross-complaint) is thereby rendered moot.

We have also concluded that the court below abused its discretion in sustaining without leave to amend the demurrers to the Church's causes of action against Maxwell, Alexander and Molko under 42 United States Code section 1985(3) and Civil Code sections 51.7 and 52 (the fifth, sixth, seventh and eighth causes of action of the

cross-complaint). The judgments of dismissal entered on those causes of action are therefore reversed. The court is directed to vacate its orders sustaining without leave to amend the demurrers of Maxwell, Alexander and Molko to the cross-complaint and to grant leave to the Church to file its proposed second amended cross-complaint.

Rouse, J., and Smith, J., concurred.

APPENDIX C

CALIFORNIA SUPERIOR COURT
CITY AND COUNTY OF SAN FRANCISCO
DEPARTMENT NUMBER THREE

No. 769-529

DAVID MOLKO and TRACY LEAL,
Plaintiffs,

vs.

HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD CHRISTIANITY, *et al.*,
Defendants.

And Related Cross-Actions.

ORDER GRANTING SUMMARY JUDGMENT

This action has been brought by two young adults, Tracy Leal and David Molko, who for periods of four and one-half and six months respectively were associated with the Unification Church,[1] but who have since left the Church and now claim that their faith was induced by improper conduct on the part of the Church and its recruiters. Plaintiffs allege that the recruiters initially misrepresented and concealed their affiliation with the Unification Church, and that Defendants then achieved such control over them by systematic manipulation of

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[1] The two Defendants who have appeared in the action are the Holy Spirit Association for the Unification of World Christianity and New Education Development Systems, Inc., both herein collectively referred to as the "Unification Church."

social influences that Plaintiffs were incapable of leaving when they discovered the group's true identity. Defendants' conduct is alleged, among other things, to have constituted a false imprisonment and a fraud, and to have intentionally inflicted emotional distress, for which Plaintiffs seek recovery of substantial compensatory and punitive damages. Plaintiff Molko also seeks the return of a $6,000.00 contribution he made allegedly while under the control of the Church.

The Defendants have moved for Summary Judgment or for more limited summary adjudications in their favor, prompting Plaintiffs to acknowledge that they are not entitled to recover under theories of violation of Civil Rights (First and Seventh Causes of Action) and Unfair Business Practices (Fifth and Tenth Causes of Action). Hence, there remains for consideration Defendants' Motion as it relates to the Causes for Action for False Imprisonment (Second and Eighth), Intentional Infliction of Emotional Distress (Fourth and Ninth); Fraud and Deceit (Sixth and Eleventh); and Restitution of Gift and Accounting (Third).

FACTS

In her Declaration in Opposition to Motion for Summary Judgment, Plaintiff Tracy Leal summarizes her four and one-half month encounter with the Church (at a time when she was 19 years of age and a college student) as follows. On June 7, 1979, she was first approached in a San Francisco bus station by a young woman who introduced her to another young man. The two indicated they lived with a group in San Francisco called Creative Community Project. Ms. Leal asked, "Is this some religious thing?" The young man responded that they all came from different religious backgrounds. Plaintiff agreed to attend dinner at their house on Bush Street, but was not allowed to speak with any of the other guests present. Ms. Leal then agreed to visit the

group's farm in Booneville. She was not prevented from leaving the farm, although transportation back to San Francisco was somewhat limited. While at the farm, Ms. Leal was kept busy with lectures, exercises, and group discussions. She had little sleep, was always accompanied by group members, and was not allowed to speak with other guests. After several days at Booneville, she was taken to Camp K, which was located in a fairly remote area of Northern California. Although Camp K had a locked gate, it was possible to leave by crossing a stream. On the second day at Booneville, in response to Plaintiff's question, a leader denied that the group was the "Moonies." Later, at Camp K, there was a similar denial, but on the same evening Ms. Leal was told that Reverend Moon's teachings were among those studied. After several weeks, she was told that Moon was their spiritual leader and that the organization was the Unification Church; by that time, she alleges, she had lost her ability to make resolute determinations. Ms. Leal became a "Moonie" and participated in the activities of the Unification Church, she now says, because she had lost her ability to freely choose whether or not to stay with the group.

Several months later, on October 20, 1979, Ms. Leal was removed forcibly from the streets of Los Angeles by persons hired by her parents and subjected to "deprogramming"; this action was filed on her behalf on July 25, 1980.

In his Declaration in Opposition to Motion for Summary Judgment, Plaintiff David Molko summarizes his experiences with the Unification Church as follows. On January 21, 1979, (when he was 27 years of age and had recently taken and passed the examination for admission to the Pennsylvania Bar), he was first approached by two young men who indicated they were involved in a group with environmental concerns called Creative Community Project. They denied they were af-

filiated with any religious group. Mr. Molko agreed to attend dinner at their house on Bush Street, but was not allowed to speak with any of the other guests present. After watching a slide show, he agreed to visit the group's farm near Booneville. Plaintiff was told not to speak with other guests and was always accompanied by members of the group. He was kept busy and given little time to sleep. Several times he considered returning to San Francisco, but each time he was persuaded by group members not to do so. After several days at Booneville, Mr. Molko went to Camp K, where approximately one week later he began to realize the group was affiliated with the Unification Church and Reverend Moon. By the time he learned the true nature of the group, he says he had already committed himself to staying with them. Mr. Molko now states that his spirit of free will had been broken by absence of contact with the outside world, the rigid indoctrination program, and his inability to make any decision on his own. Although he acknowledges that he physically could have left, and that he was aware that other guests did leave, Mr. Molko states that he did not leave because he did not want to let down all the other members of the group.

On July 26, 1979, as he was leaving the final session of the examination for admission to the California State Bar, in San Francisco, he was seized and prevented from returning to Camp K. After he had been subjected to "deprogramming," this action was also filed on his behalf.

Both Plaintiffs elaborated on their experiences in their responses to discovery requests. Thus, in her Answers to Defendants' Interrogatories (Set One), Tracy Leal states that she met David Molko on her first day with the group, soon after she had been approached at the bus station. "It was a gorgeous, sunny day. We had lunch around a table with David Molko at the table. He was a resident attorney. David knew one of my girlfriends

from junior high and high school. He was enthusiastic." (14:1-4.) After dinner that first night, Ms. Leal was asked to sign "a little hold-harmless sheet" and pay $20 in order to go to Booneville. This she did. (14:13-17.) Once she had joined the group, "departing was prevented as a result of large doses of attention and listening and care such as that between highly expressive, loving friends or family." (7:5-7.) Three weeks after she was first approached, she was told about the Church and asked to stay. "I said yes." (10:20-27.) "I was surrounded by people working harder than I had ever seen anyone do before—without complaint. I was trying to prove myself worthy of . . . special attention." (9:28-10:3.) After about three weeks "I sized up Booneville to be a place where new recruits were essentially indoctrinated in order to make them Unification Church members, but by this time I felt the means justified the ends." (15:11-15.)

At her deposition, Ms. Leal described her reasons for agreeing to go to Booneville. "I had been in San Diego, like I said, a big city and cold and impersonal . . . and I have a great love of the country. The stuff sounded interesting; sounded vague, but interesting. It wouldn't hurt to learn about this, about how a community gets together to actually accomplish something. That sounded worth knowing . . . ." (Vol. I, 47:18-27.) On the second day at Booneville, she approached a lecturer and asked, "Are you the Moonies?" The reply was "No, but we are a form of Christian group, but we don't really want to drive anyone away. So we are trying not to scare people away who might not be Christians. So we are just keeping quiet about it for awhile." This acknowledgement that the members were not being fully candid about their affiliation did not bother her. (Vol. I, 63:13-26.) Plaintiff testified that she was awakened early in the mornings by group members who came in singing. When asked what happened to those who refused to get up early, she re-

sponded, "They would either leave of their own volition, or be encouraged to leave." (Vol. I, 86:13-16.) Ms. Leal was quite happy when she first joined the group. "If I were to describe it, it would be the joy of childhood, to relinquish responsibility." (Vol. II, 56:5-12.) She testified that she believes most of the group were sincere in their commitment. "They probably had their doubts, too, and dealt with it by acting all the more fervently in favor." (Vol. III, 88:2-11.) While she was at Camp K, Ms. Leal wrote to her parents. They also came with her brother to see her at the Bush Street house, and she spent 15-20 minutes alone talking with each of them. They insisted that she leave with them but she refused, fearing they intended to abduct or "deprogram" her (Vol. III, 66:6-67:10; 68:9-12; 70:3-17; 89:9-11; 90:12-91:13.) Plaintiff testified that she deliberately induced her own suffering (hard work and long hours, cold showers, little food, banging her head on the floor) "so as to hasten my self-improvement and growth towards God by paying indemnity." (Vol. III, 169:22-170:18; 172:4-7.)

At his deposition, Mr. Molko testified that he had seen no evidence of anyone at Booneville being restrained against their will. (Vol. I, 135:28-136:15.) He knew a bus left camp daily for San Francisco, but he decided not to leave. (Vol. I, 144:22-145:16; 238:13-239:4.) After the first few days with the group, he decided that staying was more important than leaving to keep an appointment he had made earlier. (Vol. I, 169:1-10.) After ten days or so, he knew the group was associated with Moon. He says that he reacted differently to the information than he would have had it been provided at the beginning—he was more favorably disposed having had the chance to get to know the people first. (Vol. II, 18.) Mr. Molko had regular and frequent access to friends and family by telephone, and was visited by his family. (Vol. I, 171:22-173:8; Vol. II, 33:2-34:9; Vol. I, 36:9-25.) When Mr. Molko's parents visited him at Camp K, they tried

unsuccessfully to persuade him to leave. (Vol. III, 160:2-161:17.) He remained with the group because he was interested in the opportunity to have one-on-one personal relationships with other members of the Church, many of whom he respected and admired. (Vol. I, 176:28-178:15.) He believes all those in whom he had the greatest confidence were sincere and believed what they were doing was in his own best interest. (Vol. I, 180:24-181:28.) At the urging of a Church leader, and at Church expense, Mr. Molko completed a Bar review course at Hastings Law School in San Francisco while he was living at Camp K, and he then took the Bar examination. (Vol. II, 65:12-18.)

In resisting Defendants' Motion for Summary Judgment, Plaintiffs rely heavily upon the declarations of two experts, Margaret Singer and Samuel Benson. Because the declarations submitted initially in opposition to the Motion plainly contained no competent evidence concerning the state of mind of Ms. Leal or Mr. Molko, Plaintiffs were given the opportunity to file supp'emental declarations from these experts, which they did. Plaintiffs thus have had full opportunity to offer the evidence which they believe creates triable issues of fact with respect to their claims.

Dr. Singer, a clinical psychologist who claims to have interviewed 260 persons who either were or had been connected with the Unification Church, states she has found a striking resemblance between the methods of recruitment and control used by "the cults" and those used on some of the prisoners of war returned from Korea she had interviewed. (3:4-6.) She further states that Unification Church recruiters engage in systematic manipulation of the social influences surrounding the potential recruit to the extent that he loses the capacity to exercise his own free will and judgment. (3:9-12.) Dr. Singer then states that she examined both Plaintiffs and

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found that their ability to judge for themselves was greatly diminished by the methods employed, and that Plaintiffs were incapable of responding to the information that they had been deceptively recruited by Moonies, with whom they would not otherwise have freely associated. (3:23-28.) Dr. Singer states she found that as a result of the systematic manipulation of social influences performed by the Unification Church recruiters, both Plaintiffs were deprived of the judgment capacity to disassociate themselves from the Church and its members. (4:8-12.) Dr. Singer does not specify what information gleaned from her examination of the Plaintiffs led her to reach these conclusions.

Plaintiffs' second expert, Dr. Samuel Benson, is a psychiatrist who claims to have treated "a significant number" of patients suffering from psychological disorders secondary to their connection with various "cults" such as the Unification Church. (1:20-23.) Dr. Benson states he has found the recruitment and indoctrination methods employed by the Unification Church—which he too describes without elaboration as the systematic manipulation of social influences—frequently result in the recruit being persuasively coerced into activities in which he would not engage in the free exercise of his own will and intellect. (1:24-2:5.) Dr. Benson states that he, too, has examined both Plaintiffs and found they were so coerced by the systematic manipulation employed as to be rendered under the influence of those who were recruiting their membership and controlling their actions. (2:18-23.) Dr. Benson then concludes that both Plaintiffs were rendered incapable of exercising their own will and judgment by the time they learned their recruiters were acting for the Unification Church. (2:23-26.) Dr. Benson also does not indicate what, if any, specific information obtained from examination of the Plaintiffs supports his conclusions.

FALSE IMPRISONMENT

Plaintiffs' Second and Eighth Causes of Action allege claims for False Imprisonment. Both Plaintiffs allege the Defendants seized them and against their will and without their consent induced them to join the Church and held them without their consent at various locations by the use of threats of harm to them and to their families, deprivation of sleep, and psychological manipulation.

False imprisonment is defined as "the unlawful violation of the personal liberty of another." Penal Code section 236. The tort requires direct restraint of the person for some appreciable length of time compelling him to stay or go somewhere against his will, although the restraint can be by apprehension of force resulting from words, gestures, or acts. *Baines v. Brady* (1953), 122 Cal.App.2d Supp. 957; 4 Witkin, *Summary of California Law*, 2498 (8th Ed. 1974).

From the uncontroverted facts in this record, it is clear that neither Plaintiff was falsely imprisoned as conventionally understood. Contrary to the apparent meaning of the allegations of their Complaint, both Plaintiffs have acknowledged that they were never physically seized or restrained by the Defendants. At no time were they held by force of any kind; nor were their family members or others prevented from gaining access to them. To the contrary, both Plaintiffs acknowledge that they could have left at any time as they observed others doing, had they desired to do so, and that they spoke with their parents and rejected their pleas to depart. Indeed, during the period of his alleged "imprisonment," Mr. Molko commuted back and forth to San Francisco to prepare for and then to take the examination for admission to the California State Bar.

Similarly, Plaintiffs have acknowledged that Defendants made no threats of force or of other unlawful con-

duct. Plaintiffs do state that they were subjected to threats of harm,[2] but the tendered evidence makes plain that these were entirely threats of divine retribution. At her deposition, for example, Ms. Leal testified that the violence against her family which she feared would have come at the hands of God. "That was according to my new belief structure under the Church." (Vol. I, 73:27-74:1; 74:14-75:26.)

Plaintiffs also suggest they were prevented from leaving by their fear of disappointing the other Church members (e.g., Ms. Leal's Answers to Defendants' Interrogatories 7:1-4; Mr. Molko's Declaration in Opposition to Motion for Summary Judgment 4:1-4). But threats of social ostracism are not impermissible and, indeed, are constitutionally protected. See, e.g., *National Association for the Advancement of Colored People v. Claiborne Hardware Co.* (1982), —— U.S. ——, 102 S.Ct. 3409, 3430, 3433, 73 L.Ed.2d 1215.

Thus, the uncontroverted evidence establishes the absence of a triable issue of fact with respect to Plaintiffs' claim of false imprisonment: unquestionably Plaintiffs were not detained by force or by threats of force or of other unlawful conduct. Indeed, Plaintiffs admit in their Memorandum of Points and Authorities in Opposi-

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[2] In her Answers to Defendants' Interrogatoris, Ms. Leal describes the threats of harm which she experienced. "Death, illness, pain and suffering, disease of all possible sorts were believed to befall anyone who left the movement and including family, regardless of their love of God in a Christian manner." (4:12-16.)

In his Answers to Defendants' Interrogatories, Mr. Molko describes the threats of harm which he experienced. "Constant expression of how important it was not to leave the Church because it was spiritually devastating, in that, people become ill, they experienced difficulty dealing with people and/or their jobs. That people had died after the leaving the Church, with a clear indication that there was a positive correlation between leaving the Church and either becoming ill or dying in a rather peculiar way." (6a:9-12.)

tion to Motions of Defendants for Summary Judgment, "(a)bsent expert testimony, one might conclude, for example, that Plaintiffs joined the Unification Church of their own free will." (16:16-18.)

Plaintiffs contend, however, that the proffered evidence of their experts tends to show that they nonetheless were falsely imprisoned because their consent to remain with the Church was obtained when they were mentally incapable of exercising independent judgment to leave—that their consent to remain was the product of Defendants' "coercive persuasion." This evidence, however, is insufficient to create a triable issue for at least two reasons.

First, it does not appear that such "coercive persuasion," conducted without the use of force or the threat of force or other unlawful conduct, suffices to give rise to false imprisonment under the common law of this State. See pp. 10-11, *supra*. Plaintiffs rely upon *Parnell v. Superior Court* (1982), 119 Cal.App.3d 392, for the proposition that false imprisonment may occur without physical restraint. In that case, however, a seven year old boy was picked off the streets by two men in an automobile who promised him a ride home, but instead transported him to a distant part of the state, where the young boy stayed for a number of years. In considering whether the evidence made out the offense of kidnapping, the court made clear that in order for there to be an imprisonment there must be an "exercise of *force*, or express or implied *threat of force*, by which in fact the other person is deprived of his liberty or is compelled to remain where he does not wish to remain, or to go . . . ." (119 Cal.App.3d at 409.) (Emphasis added.)

The court in *Parnell* concluded that a kidnapping charge was supported by sufficient circumstantial evidence that the youth's detention had been effected by the threat of force. While noting the victim had enjoyed

considerable freedom of movement and association during the last years with his abductor, the court said it was not unreasonable to infer that the boy, who had been subjected to continual sexual abuse and taken far from his home and family, remained out of fear. The court said coercion could also be implied from the fact that the abductor had assumed the authority of a parent. The abductor had told the youth that his parents did not love him, that he had obtained legal custody, and that if he revealed his true identity he would be spanked. The court concluded that those facts raised a strong inference that the child, separated from his parenst at the age of seven, remained out of fear induced by the abductor. (119 Cal.App.3d at 409.) *Parnell* thus does not support the view that false imprisonment can be established without the presence of force or threats of force.

Analogous rules of law provide further support for the necessity of such improper conduct to establish coercion to which legal consequences attach. In order to establish compulsion or duress as a defense to a criminal accusation, an individual must show that he was subjected to commands giving rise to "a well grounded fear of imminent death or serious injury unless he complies." E.g., *United States v. Hearst* (9th Cir. 1977), 563 F.2d 1331, 1335 n.1. Similarly, the "duress" which the Civil Code recognizes for the purpose of rendering one's consent "not real or free" (Civil Code section 1567) is limited to "unlawful confinement" of a person or the "unlawful detention" of property (Civil Code section 1569); the related concept of "menace" includes the threat of such duress or the threat of "unlawful and violent injury to the person or property" (Civil code section 1570). While the mental state of the affected person is an essential element of duress, menace, and the more newly recognized form of economic compulsion, claims based upon such a state of mind arise only if that

mental state was induced by the wrongful conduct of another. See, e.g., *Louisville Title Ins. Co. v. Surety Title & Guaranty Co.* (1976), 60 Cal.App.3d 781, 799-806.[3]

Thus, under the current state of the law, Plaintiffs' proffered expert testimony does not create a triable issue of fact with respect to the claim of false imprisonment because Plaintiffs were induced to remain with the Church without the use of force or threats of force or of other unlawful conduct. And, whatever arguments can be made for expanding the definition of this tort to encompass insidious forms of mind control, such expansion

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[3] Decisions concerning the voluntariness of admissions obtained by law enforcement agents from criminal suspects also emphasize that it is threats (or promises of leniency) that render statements involuntary. E.g., *People v. Hill* (1967), 66 Cal.2d 536, 549. While improper coercion may be psychological as well as physical, intellectual persuasion is not the same as coercion. E.g., *People v. Ditson* (1962), 57 Cal.2d 415, 433. A confession obtained by "religious persuasion" or by exciting a suspect's religious anxieties, however, has been deemed involuntary. *People v. Adams* (1983), 143 App.3d 970. While this case attached legal consequences to psychological coercion which overcame the free will of an individual in the absence of force and threats of force, the decision was directed towards concerns very different from those involved here—control of police conduct. "Religious beliefs are not matters to be used by governmental authorities to manipulate a suspect to say things he or she otherwise would not say. The right to worship without fear is too precious a freedom for us to tolerate an invasion and manipulation by state officials of the religious beliefs of individuals, including those accused of crime." *People v. Adams, supra,* 143 Cal.App.3d at 988-989. Confessions obtained by such means are not thought unlikely to be true, but they are excluded because such methods offend underlying principles in the enforcement of our criminal law. *Id.* at 995. What is involved in the present case, however, is not limitation of governmental activity, but regulation of a religious organization the good faith of whose beliefs has not been challenged. While a broadened definition of involuntariness is consistent with First and Fifth Amendment values in the former context, relaxing the standards of individual responsibility in the latter would be inconsistent with important First Amendment values, as discussed below.

under the facts of this case would pose serious Constitutional questions, which is the second reason for which the expert testimony fails to preserve Plaintiffs' claim.

If "coercive persuasion" were sufficient to impose liability upon the Unification Church for false imprisonment, such liability would impinge upon the Constitutional protection of free association and freedom of religion. The decision of the First District Court of Appeal arising out of a similar factual background in *Katz v. Superior Court* (1977), 73 Cal.App.3d 952, provides particular guidance in this respect.

In *Katz*, the same experts on whom Plaintiffs rely gave remarkably similar testimony on behalf of the parents of members of the Unification Church seeking to impose conservatorships upon their adult children. In passing upon one of the several issues presented by that attempt, the court noted that "(i)n an age of subliminal advertising, television exposure, and psychological salesmanships, everyone is exposed to artful and designing persons at every turn. It is impossible to measure the degree of likelihood that some will succumb. In the field of beliefs, and particularly religious tenets, it is difficult, if not impossible, to establish a universal truth against which deceit and imposition can be measured." (73 Cal. App.3d at 970.)

In *Katz*, the Court of Appeal held that if an adult is less than gravely disabled—i.e., unable to provide for his basic personal needs for food, clothing or shelter, see Welfare and Institutions Code section 5008(h)(1)—the strong interest in protecting that individual's liberty and freedom of action precludes application of the provisions of the Probate Code to appoint a conservator for that person. 73 Cal.App.3d at 983. Alternatively, the Court held that the individual's rights to freedom of religion and association under the federal and state constitutions compel the same conclusion "in the absence of such ac-

tions as render the adult believer himself gravely disabled as defined in the law of this state." *Id.* at 983-989.

Here the proffered expert testimony, virtually identical to that given in *Katz*, similarly fails to suggest any such grave disability as would have warranted withdrawing from Plaintiffs their own right to decide whether to remain at the Church encampment. While the relief which Plaintiffs request in this case would not so directly impinge on personal liberties as would the imposition of a conservatorship, nonetheless their cause of action for false imprisonment implicates the same values. See Morse, "Crazy Behavior, Morals and Science: An Analysis of Mental Health Law," 51 *So. Cal.L.Rev.* 527, 531-532 (1978). Permitting an award of damages against the Church on the basis of the uncontroverted facts in this case would indirectly threaten the same personal liberties and exercise of the rights of freedom of religion and freedom of association that were the subject of concern in *Katz*.

If the Church were subject to liability for damages whenever it were determined retrospectively that its attempts to influence a non-gravely disabled individual to join its faith—not by force or by threat of force or of other unlawful conduct—had been so successful that the individual had lost his ability to decline, a substantial restraint would be placed on the ability of both the Church and its present and prospective adherents to practice their religion. The testimony proffered by Plaintiffs does not identify any objective conduct engaged in by the Church which in itself is unlawful,[4] or any conduct engaged in by the Plaintiffs which would have alerted Defendants to the fact that Plaintiffs' consent to remain with the Church was no longer being freely

[4] Plaintiffs only attempt along these lines is their claim of fraud, discussed in the following section.

given. Thus, if Plaintiffs could proceed to trial on the evidence tendered in this action, the Church would be required to act at its peril, with no objective criteria to guide its conduct and subject to liability whenever it were later determined that an individual who had agreed to remain with the Church had lost the capacity to decide that he or she really wanted to leave.

The decision in *Katz* rests on the principle that an adult who is not shown to be gravely disabled must have the personal and individual right to determine for himself or herself whether to associate with a religious group. Despite the possibility of coercive persuasion, or "brainwashing," the right of the individual to make such choices is so important that it cannot be removed absent a showing of grave disability. In *Katz*, it was recognized that permitting the appointment of a guardian of the person absent such a showing would impermissibly infringe upon that right. So too would rendering that person's consent subject to repudiation if it were later determined that, although neither force nor threats of force or other unlawful conduct were utilized, the consent did not reflect the exercise of the individual's free will and judgment. If that could be done, in order to avoid potential liability, neither the Church nor any other association could ever rely upon a person's agreement to join, and the individual's ability to consent to join would be severely compromised. *Ibid.*

Moreover, regulation of religious activity is particularly suspect if that regulation involves an evaluation of the underlying religious beliefs. *United States v. Ballard* (1944), 322 U.S. 78, 87; *Founding Church of Scientology v. United States* (D.C. Cir. 1969), 409 F.2d 1146, 1159; *Van Schaik v. Church of Scientology* (D. Mass. 1982), 535 F. Supp. 1125, 1142-45. Imposition of liability for false imprisonment, even if upon a religious order, does not threaten to intrude into such an evaluation of beliefs when the individual is restrained either by force or by

threats of force or other unlawful conduct. When, however, the claim is that the restraint was imposed by "persuasive coercion," the situation is very different. The declarations of Dr. Singer and Dr. Benson reveal that both doctors rest their opinions in large part upon the view that Defendants' recruitment techniques involve "systematic manipulation of social influences" which, both doctors conclude, lead Plaintiffs to make choices they would not have made in the "free exercise of (their) own will and intellect."[5] But these are not statements which are either true or false; they are veiled value judgments concerning the entire outlook of the Unification Church.[6] What is "systematic manipula-

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[5] Both doctors examined the Plaintiffs long after the events in question. They did not reach their opinions concerning Plaintiffs' state of mind based upon a contemporaneous examination independent of their views of Unification Church methods, but seem to have reasoned backwards from their disapproval of those methods to the conclusion that Plaintiffs were not thinking freely because they were persuaded by them.

[6] The danger of relying upon value judgments disguised as expert psychiatric opinion has been recognized in various contexts. See, e.g., *Smith v. Schlessinger* (D.C.Cir. 1975), 513 F.2d 462, 474-475, and authorities cited at 475 n. 45; *Wexler*, "Forward: Mental Health Law and the Movement Toward Voluntary Treatment," 62 *Cal.L.Rev.* 671, 673 (1974); Ennis & Litwack, "Psychiatry and the Presumption of Expertise: Flipping Coins in the Courtroom," 62 *Cal.L.Rev.* 693, 726-729 (1974). While the limitations of expert testimony as a means of evaluating an individual's state of mind more typically have been considered in upholding the fact finder's right to reject the expert's opinion, e.g., *Mills v. Kopf* (1963), 216 Cal.App.2d 780, 785-786, expert testimony may be excluded altogether if based on matters which may not reasonably be relied upon. Evidence Code section 801(b), and Law Revision Commission Comment thereto. See, e.g., *People v. Luis* (1910), 158 Cal. 185, 195; *Roscoe Moss Co. v. Jenkins* (1942), 55 Cal.App.2d 369; *Long v. Cal-Western States Life Ins. Co.* (1955), 43 Cal.2d 871; 1 Ziskin, *Coping with Psychiatric and Psychological Testimony* vii (3d Ed. 1981). It has also been suggested that opinions in this area are not sufficiently beyond common experience to warrant expert testimony. Evidence Code section 801(a). See Morse, *supra*, 51 So.Cal. L.Rev. at 558-560.

tion" to some may be the only true outlook to others. As the Court of Appeal asked rhetorically in *Katz*:

> "When the court is asked to determine whether (a) change (of life style) was induced by faith or by coercive persuasion is it not in turn investigating and questioning the validity of that faith? (*Id.* at 987)

Under the admitted facts of this case, the trial of Plaintiffs' claim of false imprisonment would become a trial of the entire system of worship of the Unification Church. Testing the uncontroverted facts here by the principles applicable to regulation of acts of religious organizations and their members, as *Katz* requires, imposition of liability cannot be constitutionally countenanced.

FRAUD

In their Sixth and Eleventh Causes of Action, Plaintiffs allege that they were induced to stay with the Church by misrepresentations concerning the Defendants' identity and affiliations. Both Plaintiffs allege they did not learn Defendants were attempting to induce them to join the Unification Church until the program of isolation and indoctrination had been effectively instituted, when they no longer were capable of leaving, and that as a proximate result of Defendants' fraud they were induced to join and remain with the Church.

Unquestionably, there is evidence that for the first two or three weeks of the association of each Plaintiff with the group, Church members were less than candid about their connections with the Unification Church. At the outset, Defendants identified themselves as the "Creative Community Project," the nature of which was described vaguely and somewhat misleadingly. Certainly the Defendants did not originally disclose that they were affiliated with the Unification Church or Reverend Moon,

and there is evidence that they affirmatively misrepresented that fact, particularly to Ms. Leal.

Nonetheless, the evidence which has been tendered also establishes that the asserted misrepresentations and failure to disclose cannot be deemed material or to have induced either Plaintiff reasonably to have relied upon them. Plaintiffs' own testimony eliminates any triable issue of fact in this regard. The reasons for which both Plaintiffs have acknowledged they agreed to remain with the Church, long after they knew its identity, negate any claim that it was Plaintiffs' early unawareness of the affiliation of those with whom they were associating that caused them to remain.

By their own admissions, Plaintiffs agreed to join the group because their association satisfied personal concerns and anxieties both were experiencing. Ms. Leal had been disenchanted by her experiences in a "cold and impersonal" city, was looking forward to spending time in the country (for which she had a "great love"), and was particularly intrigued by the opportunity to "learn how a community gets together to actually accomplish something." On only her second day at Booneville, a lecturer admitted to her that the group did not want to scare people away and therefore was going to "keep quiet" about its true identity for awhile. Ms. Leal was pleased by the large doses of "attention and listening and care" bestowed upon her by people who she then believed —and still believes—were sincere. She was impressed by the commitment and hard work of the others and was anxious to prove herself worthy of their special attention. Ms. Leal found the relinquishing of individual responsibility and the acceptance of a group identity to be akin to the "joy of childhood." No later than three weeks after her initial encounter, the truth about the group's ties with the Unification Church had become clear to her but the information failed to dissuade her. By this time, as she put it, "I felt the means justified the ends." Ms.

Leal was aware that other recruits, who could not adjust to the group's schedule, had either left of their own volition or been asked to leave. She, however, decided not to leave, and firmly withstood her family's efforts to change her mind.

Mr. Molko, who had recently passed the Pennsylvania bar examination and come to San Francisco looking for a job, decided after only a few days that staying was more important than returning to the City to keep an appointment he had made. He was not taken in by anything said at the group's lectures, which he referred to as "repetitious, somewhat boring, and consisting of harmless homilies." By his own account, he stayed because he was enjoying rewarding one-on-one personal relationships with members of the group whom he respected and admired. No later than two weeks after his initial encounter, Mr. Molko knew that the group members were "Moonies," but he was not deterred by this information, and later resisted his family's efforts to make him leave.

Thus, both Plaintiffs have acknowledged that they joined the group for reasons which were not dependent upon the group's exact affiliation. And, unquestionably, when they learned the group was part of the Unification Church, they did not leave or attempt to leave, although they knew they might have done so. Their actions reflect that it was not their unawareness of Defendants' affiliation that caused them to stay.

Were the Plaintiffs nonetheless to be permitted to avoid the consequences of their decision, based on the opinion of the two experts that their actions did not reflect the exercise of their own free will and judgment, many of the same problems as discussed above would arise. Inquiry into whether otherwise healthy adults "freely" chose to associate with a religious body—the bona fides of which have not been questioned—necessarily would entail a judgmental evaluation of the beliefs and

practices of that body. For reasons discussed above, such an inquiry is constitutionally impermissible.

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

In the Fourth and Ninth Causes of Action for Intentional Infliction of Emotional Distress, both Plaintiffs incorporate prior allegations, and further allege that Defendants' conduct was intentional and malicious and done for the purpose of causing Plaintiffs to suffer humiliation, mental anguish, and emotional and physical distress.

The uncontroverted evidence, however, plainly negates this claim. Whatever value judgments one may place upon the Church's methods, Defendants' conduct was not extreme and outrageous in the sense required to support such a cause of action under California law. See, e.g., *Cortez v. Macias* (1980), 110 Cal.App.3d 640, 651-653; *Fuentes v. Perez* (1977), 66 Cal.App.3d 163; *Alcorn v. Anbro Engineering, Inc.* (1970), 2 Cal.3d 493, 497-499. In this respect, Plaintiffs' contentions are similar to ones rejected in *Van Schaik v. Church of Scientology, supra*, with the following apt observations:

> ". . . plaintiff alleges only that the Church exhorted her to sever family and marital ties and to depend solely on the Church for emotional support. Neither of these alleged courses of conduct constitutes the kind of extreme and outrageous actions which will support a claim for intentional infliction of emotional distress . . . . They are similar to the demands for single-minded loyalty and purpose that have characterized numerous religious, political, military and social movements over the ages."
>
> 335 F. Supp. at 1139.

RESTITUTION OF GIFT

In the Third Cause of Action for Restitution of Gift and Accounting, Plaintiff Molko seeks the return of a

$6,000.00 gift which he made to the Church when he admittedly was fully aware of its identity and connection with Reverend Moon. The Complaint alleges that the gift was made following "use of threats, deprivation of sleep, excessively long hours of work and other activities, and psychological manipulation," (Page 29), as the result of "undue influence" and "while Plaintiff was under the domination and control of Defendants" (Page 30).

In the Court's view, this Cause of Action comes closest to presenting a triable issue of fact. See 7 Witkin, *Summary of California Law* 5620-27 (8th Ed. 1974). Nonelesless, careful review of Mr. Molko's deposition testimony negates the conclusory allegations contained in the Complaint and establishes that Mr. Molko's condition at the time he made the gift was such that no inference can be drawn that the gift reflected the decision of anyone other than himself.

Mr. Molko testified as follows:

> "Q. What were the circumstances under which you made that contribution?
>
> "A. I was told that it was tax time and that the church was in desperate need of funds, and that it would be most—that the Heavenly Father would really appreciate, and really look favorably on seeing me give the money to the church."
>
> (Vol. III, 179:18-24.)

Mr. Molko later explained that he had been fasting in Booneville immediately before he made the gift, but the fast had been for only "a day or two" (Vol. III, 183, 187). He was asked to travel to San Francisco, which he did by himself; then:

> "Got to San Francisco and was presented with the fact—oh, we are desperately in need of money. Tax

time is coming up. Can you help us? The Heavenly Father is asking you to help us."

(Vol. III, 183:22-25.)

One of the two Church members in whom he had the greatest confidence told him she "thought I should do what I thought was best" and "was pretty much leaving it up to me"; he did not discuss the subject with the other (Vol. III, 180).

While Mr. Molko gave $6,000.00 to the Church, he was told that the Church would, as it did, pay his tuition for the Bar review course he was planning to take. The explanation, he testified, for his giving and then receiving back a portion of the money was the following:

"A. That you gave God money and then God, used your money rather than you using your money, and it worked better that way. In other words, you gave your money to God and then God can distribute your money. And that way, the spiritual world can work for you.

"Q. And at that time, that point you accepted that proposition?

"A. Yes."

(Vol. III, 191:15-22.)

Mr. Molko testified further that although he had some misgivings after agreeing to transfer the money, he did not ask to have it returned because "I really believed that there was evil forces lurking around. And that if I disturbed the spiritual world enough, that something could happen. I believed that. And therefore, I felt a terrible sense of guilt and fear to ask for something that I had supposedly given to God." (Vol. III, 192:3-195:23.) Plaintiff revealed that he had other funds (amounting to "several thousand" dollars) which were available to him while he was a member of the Church,

the existence of which he did not disclose to the Defendants. Referring to these funds, Plaintiff stated "I drew the line. . . . They were quite under my control, but they stayed where they were." (Vol. III, 192:3-195:23.)

Mr. Molko's unchallenged description of the circumstances under which he was persuaded to make the gift establishes that he was not in such a weakened physical or mental state that would permit a finding of undue influence, however great his present disenchantment with the Unification Church. See, e.g., *Estate of Anderson*, (1921), 185 Cal. 700, 707; *Estate of Fritschi* (1963), 60 Cal.2d 367, 372-373. At the time, Mr. Molko certainly was not gravely disabled. Moreover, evaluating the rationality of his views concerning the desires of "the Heavenly Father" which prompted the gift would raise many of the constitutional problems discussed above. See *Estate of Supple* (1966), 247 Cal.App.2d 410, *cert. denied*, 389 U.S. 280 (1967); cf. Tribe, *American Constitutional Law* 874-875 (1978).

Thus, for much the same reasons, expansion of existing legal principles to afford Mr. Molko, a competent 27 year old law school graduate, the right to demand the return of a religious contribution which he now regrets having made, must be resisted.

CONCLUSION

Despite the heavy burden that must be met to warrant Summary Judgment, such an Order is required in this case. "Brainwashing" and 'mind control" admittedly are frightening concepts. As our understanding of psychology expands, legal principles undoubtedly will expand commensurately to provide protection against unacceptable assaults on the integrity of the human psyche. Nonetheless, when dealing with the practice of religion, important constitutional considerations require the utmost of caution. Here, Plaintiffs have made no challenge to the bona fides of the religious beliefs of the Unifica-

tion Church. Both Plaintiffs were adults when first approached by Church members. They have admitted that they were never subjected to physical restraints, or to threats of violence or of unlawful conduct. Soon after their arrival, they knew full well with whom they were associating. Although they also knew that they could leave, they decided to remain. To absolve Plaintiffs of responsibility for their own decisions, and to permit them to impose liability upon the Church for having prevailed upon them to stay, is neither authorized by the current state of the law nor consistent with the Constitutional protection afforded all religious groups in our society. Since the underlying facts are uncontroverted and negate the possibility of recovery under these circumstances, Summary Judgment must be entered in favor of the Defendants.

DATED: October 20, 1983.

/s/ Stuart R. Pollak
STUART R. POLLAK
Judge of the Superior Court

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE CITY AND COUNTY OF SAN FRANCISCO

No. 769-529

DAVID MOLKO and TRACY LEAL,
Plaintiffs,

vs.

HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD CHRISTIANITY, *et al.*,
Defendants

and Related Cross-Actions.

CERTIFICATE OF SERVICE BY MAIL
(CCP 1013a(3))

I, _____, Deputy County Clerk and Deputy Clerk of the Superior Court of the City and County of San Francisco, certify that I am not a party to the within action;

That I served a copy of the attached ORDER GRANTING SUMMARY JUDGMENT by placing said copy in an enveloped addressed to the following:

Jeffrey S. Ross, Esquire
407 Sansome Street, Suite 400
San Francisco, CA 94111

Mark H. Pierce, Esquire
Kelly, Leal & Olimpia
697 East Remington Drive,
Sunnyvale, CA 94087

Vincent B. McLorg, Esquire
Lossing, McGlynn & McLorg
850 Montgomery Street
San Francisco, CA 94115

which envelope was then sealed and postage fully prepaid thereon, and thereafter was on ————————, deposited in the United States mail at San Francisco, California.

Dated: ————————

————————

APPENDIX D

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA
IN BANK

S.F. No. 25038

MOLKO,
Plaintiff, Cross-Defendant and Appellant;

LEAL,
Plaintiff and Appellant

v.

HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD CHRISTIANITY, *et al.*,
Defendants, Cross-Complainants, and Appellants;

MAXWELL,
Cross-Defendant and Respondent

ORDER DENYING REHEARING

PANELLI, J., did not participate.

Opinion modified.

Appellants' petition for rehearing DENIED.

The Request to Take Judicial Notice is DENIED.

[Filed Dec. 1, 1988]

/s/ [Illegible]
Chief Justice

APPENDIX E

SUPERIOR COURT OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO

No. 769-529

DAVID MOLKO and TRACY LEAL,
Plaintiffs,

vs.

HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD CHRISTIANITY, *et al.*,
Defendants.

DECLARATION OF SAMUEL G. BENSON, M.D.

I, SAMUEL G. BENSON, declare and state:

I am a psychiatrist licensed to practice that medical specialty in the State of California.

As a psychiatrist I have had occasion to treat, often in a hospital setting, a significant number of patients suffering from psychological disorders secondary to their connection with various cults such as the UNIFICATION CHURCH of SUN MYUNG MOON.

I have found that the recruitment and indoctrination methods employed by these cults, and particularly by the UNIFICATION CHURCH, frequently results in the recruit being persuasively coerced into actions and activities which he would not commit or in which he would not engage in the free exercise of his own will and intellect. Many names have been put to this phenomenon such as "brainwashing", "mind control", "thought con-

trol" and "coersive persuasion." Perhaps the best term to be used in the description of the methods employed is the "systematic manipulation of social influence." Learned studies of the methods employed by Chinese communists under Mao Tse-tung reveal the methods employed to be substantially similar if not identical to those used by the UNIFICATION CHURCH and other cults.

I have examined DAVID MOLKO and TRACY LEAL in connection with their experience with the UNIFICATION CHURCH. I found that both of them suffered psychological damage, with continuing sequelae, as a result of their being victims of the afore mentioned systematic manipulation, incident to their recruitment into and confinement in the UNIFICATION CHURCH.

In the examination of MR. MOLKO and MISS LEAL I found that the deceptive recruitment methods employed in each of their cases was quite typical of the modis operandi used in UNIFICATION CHURCH recruitment. I further found that in these particular cases DAVID MOLKO and TRACY LEAL were each so coerced by the systematic manipulation employed so as to be rendered under the influence (and I must consider this to be undue influence) of those who were recruiting their membership and controlling their actions. I found that each of these young people were rendered incapable of exercising their own will and judgment by the time they learned that their recruiters were acting for the UNIFICATION CHURCH.

I further found, with reference to DAVID MOLKO and TRACY LEAL that they each suffered emotional distress from the very fact of having been deceptively manipulated and from their compliance with the requirements placed upon them to receive others in fundraising activities for the UNIFICATION CHURCH and to participate in the deception and manipulation of others in the recruitment process of the UNIFICATION CHURCH.

I further found that DAVID MOLKO and TRACY LEAL, having once come under the control of their recruiters in the UNIFICATION CHURCH, were effectively confined within that organization by virtue of the fact that they no longer had the judgment capacity to break free and leave.

I declare under penalty of perjury that the foregoing is true and correct, and if called as a witness, I would competently testify thereto.

Dated: June 30, 1983

/s/ Samuel G. Benson, M.D.
SAMUEL G. BENSON, M.D.

APPENDIX F

SUPERIOR COURT OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO

No. 769-529

DAVID MOLKO and TRACY LEAL,
Plaintiffs,

vs.

HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD CHRISTIANITY, *et al.*,
Defendants.

And Related Cross Action

DECLARATION OF MARGARET THALER SINGER, Ph.D.

I, MARGARET THALER SINGER, declare and state:

I hold a Doctorate in clinical psychology and am licensed by the State of California to practice clinical psychology.

I am a professor in the Department of Psychiatry at the University of California, San Francisco. I am also a professor in the Department of Psychology at the University of California at Berkeley. My Curriculum Vitae is attached.

My interest in family studies brought me to an awareness, commencing in the late 1960's, of the emergence of a large number of cults. In this respect I have interviewed, as a psychologist, approximately 700 persons who

were either then or had been members of a cult. Approximately 260 of these persons had their cult connection with the UNIFICATION CHURCH of SUN MYUNG MOON. Most of the persons whom I interviewed in this respect had been members of or were then members of organizations which were religions or claimed to be religions.

A cult has various distinguishing criteria. Cult leaders are self-appointed messianic persons who claim to have special missions in life, which they claim have been given to them because they are unique. The veneration of the group form is directed toward the leader rather than toward God or abstract principles such as might be done in other kinds of organizations. Usually the cults have a double set of ethics in that a cult member is open and honest within the cult but learns that it is all right to deceive non-members. It is also usually true that the cult has only two real purposes in their existence. Those purposes are fundraising and recruiting other members.

The cults tend to be authoritarian in their power structure in contrast to the wider society of democracy in which we live. Cults also tend to be totalistic in the sense that they prescribe down to the tiniest detail how one should communicate with other members in the groups, non-members, the precise activities in which they should engage, etc.

As a senior psychologist in the research unit at Walter Reed Hospital, I studied American military personnel returning from the Korean War. I did a follow-up study, approximately five years later, to see what changes had come about in the lives of the individuals that had been interned as prisoners in Korea. I also had occasion to interview a number of clergy who had been civilian prisoners in mainland China and had been subjected in various types of influence processes and coercion processes in the Far East.

I have found, as have others, a striking resemblance between the methods of recruitment and control used by the cults and that used on some of the prisoners of war, including the clergy.

More particularly I have found that the recruitment and indoctrination methods employed by the UNIFICATION CHURCH are tremendously sophisticated. The recruiters engage in systematic manipulation of the social influences surrounding the potential recruit to the extent that the recruit, in fact, loses the capacity to exercise his own free will and judgment.

As a clinical psychologist I have examined both DAVID MOLKO and TRACY LEAL in connection with their recruitment and indoctrination into the UNIFICATION CHURCH and their experiences with that cult. I found that the deceptive practices for both recruitment and psychological confinement of these two young people were extremely typical of the practices of recruiters in the UNIFICATION CHURCH—particularly those from what is called the "Oakland family." I have found that both DAVID MOLKO and TRACY LEAL were rendered incapable of exercising their own will and judgment as a result of the systematic manipulations performed by the UNIFICATION CHURCH members. I found that the ability of DAVID MOLKO and the ability of TRACY LEAL to judge for themselves was greatly diminished by the methods employed and these two recruits were not capable of responding to the information that they had been deceptively recruited by Moonies with whom they would not otherwise have freely associated.

I further found, with reference to DAVID MOLKO and TRACY LEAL, that they each suffered emotional distress as a result of their being deceptively manipulated. They each also suffered emotional distress from the fact that they complied with the requirements placed upon them to deceive others in either fund-raising or

recruitment activities on behalf of the UNIFICATION CHURCH.

I also found that as a result of the systematic manipulation of social influences performed by the UNIFICATION CHURCH recruiters, DAVID MOLKO and TRACY LEAL were each deprived of the judgment capacity to disassociate themselves with the UNIFICATION CHURCH and its members.

I declare under penalty of perjury that the foregoing is true and correct, and if called as a witness, I would competently testify thereto.

Dated: July 6, 1983

/s/ Margaret Thaler Singer
MARGARET THALER SINGER

APPENDIX G

SUPERIOR COURT OF THE STATE
OF CALIFORNIA
COUNTY OF SANTA CLARA

No. 615484

KENNEDY LOWDER; JUDITH LOWDER; PETER HARRIS; PATRICIA HARRIS,

Plaintiffs,

vs.

SNAP-ON TOOLS CORP., *et al.*,

Defendants.

DECLARATION OF MARGARET SINGER IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY ADJUDICATION OF ISSUES

Date: July 27, 1988

Time: 9:00 a.m.

Dept.: 10

I, Margaret Singer, Ph.D., declare:

1. I am a licensed Clinical Psychologist and an Adjunct Professor in the Department of Psychology at the University of California, Berkeley. I have been a practicing psychologist, teacher, and researcher for over forty years. I am a former President of the American Psychosomatic Society. For many years, I have been involved

in the study of communication and influence techniques. I was a consultant to the Massachusetts Institute of Technology, School of Industrial Management, in follow-up studies of United States prisoners of war from the Korean War. More recently, I was awarded the Leo J. Ryan Memorial Award for research on cults. My research has centered upon situations in which there is a systematic manipulation of psychological and social influence techniques by a stronger partner over a weaker partner, usually in a context in which the stronger partner presents, or appears to be, a reliable and trustworthy authority figure. My curriculum vitae is attached hereto as Exhibit "A."

2. I have met and interviewed Peter Harris and Kennedy Lowder, as well as several other Snap-On dealers and field managers. I have reviewed Snap-On sales literature and many of the declarations on file in this action. Based on this personal investigation and my expertise in the field, it is my opinion that Snap-On Tools Corporation employs techniques of psychological manipulation to influence the actions of its dealers. In particular, these techniques were used to overcome the wills of Peter Harris and Kennedy Lowder when they signed termination agreements.

3. Normal individuals subjected to coordinated programs of coercive influence and psychological manipulation can be psychologically managed and dominated without knowing they have been manipulated. A coordinated program of intense behavior control may occur in the context of a business relationship. Otherwise normal and adequately functioning individuals can be particularly susceptible to psychological manipulation when they possess a combination of ordinarily desirable character traits: a trusting nature, respect for authority, and a desire for approval. Persons who are not "street-wise," who have not been "conned," who are not skeptical by nature, or who because of training or experience, act out

of innocence, may be abused by others applying coordinated programs of coercive influence and behavior control.

4. Organizations that by design intend to manipulate others usually do so by controlling, suppressing, and misrepresenting material information. The organization seeks to make individuals dependent on the organization, to isolate the individual from other sources of information, and to make continuous appeals to and attacks on the psychological stability of the individual.

5. A well established, prestigious organization enjoying the stamp of respectability may engage in a coordinated program of intense behavior control with a great likelihood of success, as such organizations will not be regarded with suspicion and will not likely engender doubts. This is particularly true in a business context between unequal partners, such as a well-known and prosperous company soliciting the participation of an unsophisticated individual for a business venture. The company, if it chooses to be manipulative, can build upon the inherent respect and trust of the ordinary citizen in such a business venture. In my opinion, Snap-On's repeated statements that it is a "Fortune 500" company in communications with dealers suggests that Snap-On uses its respectability to try to manipulate its dealers.

6. A business organization utilizing coercive influence may spread its control into far more than just the business life of a weaker partner. This encroachment is known as "multiple invasive relationships." These are invasions by the stronger partner into the home life, social life, emotional and other private areas of a weaker partner's daily existence. These invasions make the organization capable of influencing all areas of an individual's life. This type of invasive conduct is beyond the normal bounds of business relationships. Snap-On engaged in such multiple invasive relationships, among

other ways, when it told dealers' spouses that the dealers were failing because they were not working hard enough.

7. When an organization intentionally institutes and carries out a coordinated program of coercive influence and behavior control and invades all areas of an individual's life, it can affect a person's psyche. The object's personal, social, and family life can be seriously harmed. An individual may be led, influenced, or coerced to carry out acts that are not in his best interests. A program of coercive influence can lead the weaker partner to comply with the stronger partner's will, without the weaker knowing that he has been influenced at all.

8. Since coercive methods make the process of persuasion obvious, subterfuge is often used. The persuader tries to keep his subject unaware of the intention to elicit compliance.

9. The ability to fend off persuaders is reduced when one is rushed, stressed, uncertain, uninformed, and fatigued.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: June 24, 1988

/s/ Margaret T. Singer
MARGARET SINGER

APPENDIX H

SUPERIOR COURT
ALAMEDA COUNTY, CALIFORNIA

No. 554520-8

DOLE

v.

HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD CHRISTIANITY

(April 12, 1984)

DEPOSITION OF MARGARET SINGER

* * * *

[168] A. Yes, I do.

Q. What is your definition of brainwashing?

A. My definition of brainwashing is essentially the same one that I have presented to you as the conditions which I call the [169] conditions necessary for the systematic manipulation of psychological and social influence.

Q. So are you saying, then, from your perspective the term brainwashing is synonymous with the systematic manipulation of psychological and social influences?

A. I'm saying it is subsumed under the broader heading that I offer.

Q. That's why I asked you specifically whether or not you have an opinion as to whether or not Barbara Dole

was subjected to brainwashing. Since you said this was subsumed, I want to find out whether she comes within that category as well?

A. If a person—and my answer would be yes. If I were able to ascertain that the person asking such as when you asked, I want to know what your definition of brainwashing was, because I find oftentimes people have very hazy or mistaken or—

Q. I understand.

A. Odd personal definitions of a term such as this—that.

Q. Now, I have asked you today would you please give me your definition of brainwashing. I understand it's subsumed within a larger category?

A. My definition of brainwashing is that it is the systematic manipulation of psychological and social influence under certain psychological and special circumstances and conditions.

Q. Could you please give me the psychological and social conditions which you are referring to in your last answer?

A. First of all, that the person or organization that's engaging in the so-called brainwashing or systematic manipulation of special and psychological influence gained [170] control over the person's social and/or physical surroundings, but especially gained control over the person's time.

Secondly, the individual, individuals or organization that's engaging in brainwashing as a part of the longer term of the systematic manipulation to which I just referred, the organization gains control over the person's time especially. And by gaining control over their circumstances and social surroundings creates a sense of powerlessness in the person.

Q. Are there any other conditions?

A. Yes.

Q. What are they?

A. And that through the manipulation of rewards, punishments and experiences begins to and eventually ac-

complishes suppressing the overt display of certain aspects of the social self that the person brought to the organization. And that the organization manipulates rewards, punishments and experiences in such ways as to elicit the behavior that the management wants from the person. Usually, the person has to be unaware that they are being manipulated.

Further, the circumstances are usually those in which there is no criticism of the management. It has to be a pretty authoritarian and totalitarian power structure within the organization so that no criticisms from the people or person being exposed to this systematic is possible. There is no correction upward. Usually, a tremendous suppressing of anything other than the general desires of management.

Q. You are finished?

A. Yes.

[171] Q. What is your definition of coercive persuasion?

A. Generally, that circumstances similar to what I have just outlined have been present in the milieu where a person is. And that through various psychological and social techniques, the person is coerced into allowing themselves—themselves to be persuaded by the management level people who are in charge of the conditions.

Q. Is there any difference between coercive persuasion and brainwashing?

A. Usually not.

Q. When you say usually not, is there any difference at any time?

A. Not in my definitions where I have specified the above mentioned features.

Q. Is there any difference between coercive persuasion and your definition of the systematic manipulation of psychological and social influences?

A. Not when the circumstances are spelled out as I have above spelled them out.

Q. So what you are saying is the definition which you gave today in respect to the question of brainwashing is the same definition you use for purposes of defining coercive persuasion?

A. Yes.

Q. And it's also the same definition you use for purposes of the term which you have identified as systematic manipulation of psychological and social influences?

A. Yes.

Q. And there are no differences than in your use of those [172] three terms as you define each of them, is that correct?

A. As I define each of them.

Q. As long as we use your definition for brainwashing, coercive persuasion, or systematic manipulation of psychological and social influences, we are talking about the same phenomena?

A. Yes.

* * * *